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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 178

JOHN RUSSELL CROOKER, JR., PETITIONER,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

PETITION FOR CERTIORARI FILED APRIL 19, 1957

CERTIORARI GRANTED JUNE 10, 1957

SUPREME COURT OF THE UNITED STATES

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No. 178

JOHN RUSSELL CROOKER, JR., PETITIONER,

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[fol. a]

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

JOHN RUSSELL CROOKER, JR., Defendant

Appeal from the Superior Court of Los Angeles County
Santa Monica Dept. B. Hon. Stanley Mosk, Judge

Reporters' Transcript on Appeal—Filed February 24, 1956

APPEARANCES:

For Plaintiff and Respondent: State Attorney General.
For Defendant and Appellant: Robert W. Armstrong, Esq., 2573 Saturn Avenue, Huntington Park, Calif., LOgan 3339.

[fols. b-19] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES, SANTA MONICA, DEPT. B

Hon. Stanley Mosk, Judge

No. 174310

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

JOHN RUSSELL CROOKER, JR., Defendant

Transcript of Proceedings—November 17, 18, 1955

APPEARANCES:

For the People: A. Alexander, Esq., and Allan H. McCurdy, Esq.
For the Defendant: Robert W. Armstrong, Esq.

[fol. 20] DR. FREDERICK D. NEWBARR, called as a witness on behalf of the People, having been first duly sworn, was examined and testified as follows:

The Clerk: Be seated and state your name, please.
The Witness: Frederick D. Newbarr.

Direct examination.

By Mr. Alexander:

[fol. 21] Q. Can you estimate the number of cases in which you have so testified?
[fol. 22] A. It would be easily one thousand or more.

Q. Doctor, in addition to your official capacity as Autopsy Surgeon, have you made any further studies along those lines?

A. Yes, sir, I have.

Q. What studies have you made, Doctor?

A. Done post-graduate study in New York City and in Detroit; and I hold the academic rank of Clinical Professor of Forensic Medicine at the University of Southern California. I am the head of the department. I hold the academic rank of Clinical Professor at the College of Medical Evangelists, but I am not the head of the department there. I am a member of the American Academy of Forensic Scientists; and, of course, the County Medical, the State Medical, and the American Medical Associations. I am a member of the Sub-Committee of the Committee studying medical-legal problems of the American Medical Association.

Q. Doctor, did you perform an autopsy on the 6th day of July, 1955, upon the body of Norma E. McCauley?

A. Yes, sir.

Q. As a result of the autopsy, Doctor, did you form an opinion as to the cause of death?

A. I did.

Q. Will you state that opinion, please?

A. My opinion is the cause of death was massive hemor-
[fol. 23] rhage due to a stab wound of the chest and other conditions, with strangulation.

Q. Doctor, would you be good enough to state your findings and the basis for your conclusions, and if necessary,

refer to notes made by you at your direction, and I take it you may do so, Doctor.

A. The examination disclosed the body as that of a Caucasian female measuring four feet, eleven and one-half inches in height. Weighing 96 pounds, having reddish hair, gray eyes, light complexion, and stated to be thirty-three years of age.

The following wounds are designated numerically for the purpose of identification only: Wound number one is a laceration in the skin of the chest, located twelve inches below the top of the head and one and one-quarter inches to the left of the midline. The opening measures five-eighths by one-quarter inch. The wound tract passes through the soft tissue below the clavicle and lacerates the upper half of the first costal cartilage where the wound tract ends. No vital structures are involved.

Wound number two is a laceration in the skin of the chest, located eleven inches below the top of the head and three and three-quarter inches to the left of the midline. The laceration measures nine-sixteenths by one-quarter inch. The wound tract enters the chest by passing through soft tissues just below the outer third of the clavicle where [fol. 24] it lacerates the subclavian vein. The wound tract passes through the parietal pleura and then continues through the apex of the left lung and makes a small laceration in the pleura on the left lateral surface of the spinal column at the level of the second thoracic vertebrae. The approximate distance from the surface of the skin to the terminal point of the wound tract measures four inches.

There are massive clots and hemorrhage in the left chest cavity. Wound number three is a laceration in the skin of the left upper arm on the anteriolateral border. The opening measures three-quarters by one-quarter inch. The wound tract passes through soft tissue posterior to the humerus and makes an exit wound in the skin of the left axilla where the laceration measures three-eighths of an inch. With the arm at the side there is a superficial laceration in the skin in the posterior axillary line which measures seven-sixteenths of an inch. The entire wound tract is explored and there is very little ecchymosis and some small amount of liquid blood along the wound tract. The approximate dis-

tance from the point of entrance to the point of exit measures four inches.

Wound number four is a superficial laceration in the skin of the left arm on its anteromedial border in the middle third. The wound tract involves the skin and superficial [fol. 25] subcutaneous tissues only.

Wound number five is a laceration in the skin of the back, located thirteen and three-quarter inches below the top of the head and one-half inch to the left of the midline. The wound tract involves the skin and superficial subcutaneous tissues only. No vital structures are involved.

Wound number six is a superficial scratch-like laceration on the extensor surface of the left forearm in its upper third.

Wound number seven is a superficial laceration in the skin of the web between the right thumb and index finger. The laceration measures nine-sixteenths inch and involves the skin only.

Wound number eight is a superficial laceration in the skin of the right index finger. The laceration measures—I am sorry, I read wound number seven twice. Would you strike that out, that section, wound number eight.

Wound number eight is a superficial laceration in the skin of the right index finger on the thumb side and measures one-half inch. Wound number nine is a laceration on the extensor surface of the middle finger of the right hand over the first phalanx. The laceration measures three-eighths of an inch and involves the skin and superficial subcutaneous tissues only.

[fol. 26] Wound number ten is a superficial abrasion in the skin of the left upper chest and the adjacent tissues show bluish discoloration.

Wound number eleven consists of two small superficial abrasions in the skin of the left lower face, lateral to the mouth.

Bluish discoloration is present in the skin of the left forehead. Upon reflecting the scalp there is reddish-purple discoloration on the under surface in the left frontal region. After removing the calvarium there is no evidence of trauma to the skull, brain coverings or brain. The blood vessels at the base of the brain are thin-walled and patent. Coronal section of the brain fails to reveal any gross pathologic change.

There is a depression in the skin of the right neck and an abrasion extends across the mid portion of the anterior neck. Dissection of the organs of the neck reveal a small area of ecchymosis in the soft tissues on the left side at the level of the lower portion of the thyroid cartilage. The hyoid bone, the hyothyroid membrane, and the thyroid cartilage are all intact. There is no deformity of the thyroid cartilage. The cricoid cartilage and tracheal rings are intact. The laryngeal mucosa show no gross pathologic change.

In the abdomen there is no evidence of trauma. The stomach contains about eight ounces of partially digested [fols. 27-40] food and fluid. Particles which appear to be meat and peas are visible. The gastric mucous membrane shows no gross pathologic change.

The uterus is small. There is no evidence of pregnancy. Microscopic examination of vaginal smears is negative for spermatozoa.

Examination of the blood shows the presence of .043 per cent ethanol. That is .043 per cent ethanol, which is ethyl alcohol.

[fol. 41] Q. Now, Doctor, wounds Nos. 7, 8 and 9 appear to be on the right hand of the deceased, is that correct?

A. That is correct.

Q. Doctor, in your experience as an autopsy surgeon, have you seen wounds similar to 7, 8 and 9 as shown on [fol. 42] People's Exhibit 6?

A. Many times.

Q. Doctor, did you form an opinion as to how those wounds were suffered?

Mr. Armstrong: Pardon me just a moment, Doctor. To which we will object, your Honor, on the basis that it calls for a conclusion of the witness, and it is without adequate foundation. I don't believe that the experience of the doctor, having examined the condition on many different occasions, would give him experience as to causation of the wounds that he observed.

The Court: Objection overruled. You may answer.

The Witness: Wounds of this type are classified as defense wounds.

Mr. Armstrong: Pardon me. Just a moment, Doctor.

The Court: That answer may be stricken, and I will instruct the jury to disregard it. Read the question.

(Whereupon the reporter read the following question:

"Q. Doctor did you form an opinion as to how those wounds were suffered?")

A. By the Witness: Yes, sir.

Q. By Mr. Alexander: Do these particular wounds——

Mr. Armstrong: (Interrupting) Pardon me. I believe there is a pending question.

The Court: The answer "Yes" answers the question.

Mr. Armstrong: I am sorry.

[fols. 43-47] Q. By Mr. Alexander: Is there a descriptive word for these particular wounds?

A. There is.

Q. What is that?

Mr. Armstrong: Your Honor, to which the defense will renew the objection on the same ground.

The Court: Objection overruled. You may answer.

The Witness: These wounds are classified as defense wounds.

[fol. 48] By Mr. Alexander:

Q. Doctor, before the recess we were discussing the depressions of the skin of the neck as shown on Exhibits 7 and 8. You say that dissection of the organs of the neck reveals a small area of ecchymosis of the soft tissue of the left side at the level of the lower portion of the thyroid cartilage. Whereabouts is this thyroid cartilage?

Will you point to it, please, on me?

A. The thyroid cartilage is a prolongation, as anyone can see, which is commonly known as the Adam's Apple. Ecchymosis is on the left side of the thyroid process but in the soft tissues.

Q. I take it the different bones about the neck were not broken?

[fol. 49] A. There is only one bone, and that is the hyoid bone. The others were cartilage and they were not broken—yes, that is correct.

Q. Will you describe the extent of the wounds as shown on People's Exhibit No. 7 and People's Exhibit No. 8?

A. On both of these pictures one sees a rather extensive wound in the skin and in the soft tissue which shines through. In other words, this is a type of wound in which considerable pressure was exerted. The discoloration which you see shining through the skin is actually hemorrhage just beneath the skin.

Q. You say great pressure was exerted; would you say that there is extensive wounds commensurate with the pressure exerted?

A. No, there was really very little.

Q. Now, can you tell us why that was?

A. In my opinion it was because of the fact that at the time that this pressure was exerted this individual was either dying or dead. I would say dying.

Q. Doctor, did you form an opinion as to what caused those wounds as shown in People's Exhibits 7 and 8, that is, the wounds to the neck?

A. Yes.

Q. What?

A. They were caused by the application of ligature; and [fols. 59-72] if you will look at the pictures closely you can see the little corrugations in the skin. In other words, the skin is folded over on itself.

Q. Directing your attention to, I believe this is People's Exhibit No. 1, is that right?

A. People's Exhibit No. 1.

Q. Could that have caused the injuries as shown on People's Exhibits 7 and 8?

A. Yes, sir.

Q. Doctor, I believe you told us that strangulation was also the cause of death, is that correct?

A. Yes, because of the evidence that is apparent in the superficial skin, we just simply can't disregard the strangulation. However, as I said before, it is my opinion that the strangulation took place at the time when the individual was dying.

[fol. 73] Q. Now, to refer you to picture No. 1, reference has been made to that picture, Defendant's Exhibit A for identification, and I want to direct your attention to some

stains which appear on the drapes in this room; do you see where the stains appear on the drapes?

A. You mean the black marks?

Q. The black marks, yes.

A. Yes.

Q. If I were to tell you that these were blood stains, now, upon the examination that you made of the body of Mrs. McCauley, in your opinion, Doctor, would it have been possible for blood to have gotten in this area that is indicated from the body of Mrs. McCauley if she were stabbed?

[fol. 74] A. You mean as a direct flow of blood?

Q. Yes, yes—assuming that Mrs. McCauley was on this chaise lounge that is pictured here, and assuming that she was on it in a seated or lying down position, and the wounds were inflicted that you have described, including wound No. 2, in your opinion could these marks have come up here in this area?

A. Directly from the severed vein, that is your question?

Q. Yes, that's right.

A. No, these marks appear to be merely small spatterings of blood; if it were a direct flow of blood I think that the blood would be streaming down from the point. I don't think that it would simply land there and end there.

Q. That's right. Well, now, in your opinion, from the type of wounds that you saw would it have been possible, with the body being on a chaise lounge in this position, for blood to have spattered after the wounds were inflicted, to that height, from the type of wound that you saw?

A. Well, when you say spatter, I want to know a little more what you mean. For instance, somebody splashing into blood and spattering it, or do you mean a direct flow from an open blood vessel?

Q. I mean the latter.

[fol. 75] A. From the direct flow of a blood vessel I don't think it would make that kind of a mark. I mean, I think that from a direct flow from a blood vessel we would have a streak coming down the curtain.

Q. In other words,——

A. It wouldn't end merely as an individual spot.

[fols. 76-81] Q. Well, to refine the question a little, perhaps, Doctor, if, from the type of damage that you saw to this body, and from your experience in the past in such

examinations, would it be your opinion that the blood could have splashed up there, could have spurted or squirted up there as the weapon was withdrawn from the body?

A. I don't think so.

[fol. 82] Q. Are you able to say, then, Doctor, whether or not the ligature was first applied around the neck and then the stabbing took place, or whether the stabbing was first and then the ligature applied?

A. In my opinion the stabbing occurred first and the ligature was applied later.

Q. It would therefore follow as part of your opinion that at the time the stabbing actually took place there was no interference such as this ligature would have created, as far as the throat is concerned?

A. That's right.

Q. Even with the large hemorrhage that you observed, you still feel the body would have been in such shape that the discoloration later discovered in the neck would have been made by this ligature?

A. Yes, that discoloration in the neck was only in the skin, and the patient was not quite dead—when I say not quite dead I mean that the heart beats frequently for some time after the individual is apparently dead, and that is what we have here.

Q. All right, now, Doctor, you said that in addition to the other examination that you made, you examined the stomach and the contents of the stomach?

A. Yes, sir.

Q. I believe you testified that you found eight ounces of partially digested food and fluid in the stomach, is that [fol. 83] correct?

A. That is correct.

Q. And that some of this food was recognizable and appeared to be meat and peas, is that right?

A. Yes, sir.

Q. As to that, from your experience in having examined the stomachs of people after death, and from your examination of Norma McCauley's stomach contents, were you able to form an opinion as to what time or how long a time before her death she had consumed the food that was still within her stomach?

A. Yes.

Q. How long a period of time would you say that was?

A. I would say that she had taken the food at least less than four hours.

Q. I see. Now, isn't it a fact, Doctor, that food normally is digested completely in a period of about four hours?

A. Four to six hours.

Q. And the stomach is vacated?

A. It is emptied in approximately four to six hours.

Q. From the amount of contents you found there would it be safe to say that the—would it be possible that this food had been consumed within the last two hours?

[fols. 84-92] A. It is extremely difficult. I think two or maybe three hours—I don't think you could actually pinpoint it. I do say it is partially digested—I don't know, two hours, three hours—could be a good answer either way.

Q. But if the choice of time, Doctor, had to be in excess of four and one-half hours or less than two and one-half hours, which would you say was indicated as to the time of the consumption of that food?

A. Well, now, you say in excess of four and a half hours?

Q. If I were to tell you the food was either consumed in a period in excess of four and a half hours before the death or less than two and a half hours before death, which period of time would you say?

A. I would take that two and a half hours.

Q. You would say the latter period of time?

A. Yes, because I think that it is reasonable to assume that in a four and a half hour period the stomach would be at least almost completely empty.

[fols. 93-97] Q. I suppose from your testimony on direct examination, what you referred to as defensive wounds, on the hands and fingers, one perhaps on the arm, would indicate to you that there had been some body movement going on, some sort of a fracas in other words?

A. I would think it is a suggestion of a struggle, more than a suggestion. It is actual evidence.

[fols. 98-109] JOHN BAIRD, called as a witness on behalf of the People, being first duly sworn, was examined and testified as follows:

The Clerk: Be seated, please, and state your full name.
The Witness: John Baird.

[fol. 110] Cross-examination.

By Mr. Armstrong:

[fol. 111] Q. Now directing your attention to the time that you were at the Thompson home on July 4th, did you—I would like to get the sequence here. You told us after you had gotten there, you had a drink before dinner and then you commenced the preparation for dinner, is that right?

A. Yes.

Q. And that after dinner you had fireworks out by the pool, is that right?

A. Correct.

Q. Well, now, were you present at that time?

A. Yes.

Q. At the time that the fireworks were being displayed, was Mrs. McCauley present at that time?

A. Yes.

Q. Were you assisting in setting off the fireworks?

A. I think so. I think we all probably lighted the fuses to one or two.

Q. And that would also include Mrs. McCauley?

A. I would think so.

Q. And at the time you were setting off the fireworks by the pool, just to get the sequence here, you said you [fol. 112] helped in the kitchen. Did you do the clearing away before or after you set off the fireworks, do you recall?

A. Well, I think it would follow. You see, the preparation of the dinner was informal, and the relieving of the congestion afterwards was also informal. For instance, I might have taken a couple of things into the house and there may have been one or two fireworks exploded at the time I was doing that. It wasn't just exactly categorized in that sequence of events.

Q. But would it be safe to say that everybody had finished the meal before you actually started with the fireworks?

A. That would be correct.

Q. All right. How long would you say it took from the time that you began to set off the fireworks until you completed exploding all the pieces that were involved?

A. It wasn't very long, because the boys had jumped the gun with a number of the fireworks prior to that time. I would say fifteen minutes.

Q. And then how long would you say it was after you had finished setting off the fireworks that Mrs. McCauley left to run this errand, taking the children home?

A. Five or ten minutes thereafter.

Q. And when you went into the house, there was the television program that Miss Gallagher and Mr. Block were particularly interested in, that was after Mrs. McCauley had [fol. 113] left?

A. Yes. I did not watch the television show. I worked in the kitchen while they were, I think, upstairs or in another part of the house where there was a television set.

Q. Did they go upstairs to see the program after Mrs. McCauley left?

A. Yes. They may have been proceeding up the stairs as she left. It was about the same time.

Q. You recall that this television program they wanted to see was a program that came on the set at 9:00 o'clock?

A. Yes.

Q. So that you can pretty well establish the time that they were going up the stairs at 9:00 o'clock?

A. Right.

Q. By way of summation of your testimony, considering the things you did in between, the clearing away of things and the displaying of fireworks, that this was after the meal was completed, that would take the time that the meal was completed back to about 8:30?

A. I think you would be about right.

Q. After Mrs. McCauley returned back—first strike that. When you were having the meal, the meal you stated consisted of steaks and there were individual steaks prepared [fol. 114] for each adult there, I take it, is that right?

A. Right.

Q. And did you notice, on that occasion, if Mrs. McCauley ate hers, as well as everybody else eating theirs?

A. Mrs. McCauley had as much as she usually did. She was a small person with a small stomach, and the steaks were fairly large. I wouldn't evaluate exactly how much, but she ate a good portion of her dinner.

Q. But from your experience—you had had meals with Mrs. McCauley before?

A. Correct.

Q. And from your experience in seeing what Mrs. McCauley ate, you would say that for her, she had a normal meal, is that right?

A. Yes.

Q. And for the balance of the evening Mrs. McCauley returned from this errand after a few minutes, is that right?

A. Right.

Q. And then you were more or less constantly in her company from the time she returned from the second errand of taking the older children home until the time you left her at the front portion of her home, is that right?

A. Correct.

[fol. 115] *Q. And during that time, from 9:00 o'clock or shortly after that she got back from taking the children home, until 12:30, did she have anything else to eat?

A. Not to my recollection.

Q. Well, if she had had something else to eat, you probably would have observed it, would you not?

A. Possibly. I might say that in the playroom there were a couple of compotes that contained perhaps potato chips or nuts or something of that kind, and unless one were specifically observing that type of thing, you wouldn't think about it one way or the other.

Q. You can say positively, from the time that she returned from this errand on, she didn't consume any meat?

A. No, I can say that.

Q. She didn't consume any vegetables, such as peas, from this time on?

A. No.

Q. Now, you told us the people that were present on this occasion were Pat Gallagher and Bob Block and George Fox and Jean Davis, upon being reminded of the latter name?

A. Right.

Q. Then the nurse—the children's nurse or Norma's maid was also there early in the evening until seven?

A. Yes.

Q. And then she went home with the baby, and then [fol. 116] Norma took the older two children home?

A. Right.

Q. Now, after you got back, was there anything in particular that establishes the time in your mind that you left the Thompson residence shortly after midnight? How do you mark that in your mind? Did you consult your watch?

A. No. It was because of a radio program that we were all listening to, a program of dance music, which concluded at 12:00 o'clock. We listened to the news headlines, which I think took five minutes, and then we left directly thereafter.

Q. You remember that that was the Lucky Lager Dance Time program?

A. Yes.

Q. That finishes at midnight?

A. Yes.

Q. And you remember after you had listened to the music and you had listened to the news headlines, someone in the party, Bob Block and perhaps George Fox, went out to straighten up the food container outside?

A. Yes, I recall that. As a matter of fact, I think I may have taken a check look around the pool to see that everything was in its place.

Q. Is it your recollection that you spent enough time around there so that it would have been several minutes [fol. 117] after twelve when you left the Thompson home?

A. Yes.

Q. How far is it from Stradella where the Thompson home is located to Somera Road where the McCauley Road is located?

A. I am not a good judge of distance, but I would say it might be a mile and a half, something of that sort.

Q. Then did George Fox and Jean Davis leave the house before—leave the Thompson house before you and Bob Block did?

A. No.

Q. You all left approximately the same time, is that right?

A. Yes, sir.

Q. Now, do you recall what it was that—you said that Norma was carrying some of the things from dinner when you opened the car door to let her out.

Do you have any recollection at all whether or not these thing were dishes, or was it actually food, or what?

A. No. To my best recollection she didn't carry back any food. They would have been dishes, perhaps a soup server or some equipment of that kind for the purpose of preparing the meal.

Q. But as far as you recall, what she was putting on the sideboard or the drainboard there wasn't any food?

[fols. 118-149] A. I don't believe so.

[fol. 150] LAURIE DROMTRA, called as a witness in behalf of the People, having been first duly sworn, was examined and testified as follows:

[fols. 151-162] Direct examination.

By Mr. McCurdy:

[fol. 163] Q. Later on, on July 5th, that is Tuesday, July 5th, did you go into Norma's room sometime that morning?

A. Well, the little boy went there first.

Q. Who went there first?

A. Kirk, the second boy.

Q. How old is Kirk?

A. Five.

Q. After he went there, did he come back and talk to you, without telling us what he told you.

A. Yes, he came in to the breakfast table and he said, "Laurie, you better go in; Mommie is in a mess."

Q. What did you do?

A. I went in there.

[fol. 164] Q. What did you see?

A. I looked at the bed and I saw the purse, all the contents were lying around on the floor.

Q. Where was the purse?

A. On the bed.

Q. The contents that you refer to as "lying around on the floor", what did that consist of?

A. Mostly keys, loose keys.

Q. What did you do with those keys and purse, if you recall?

A. I called the boy back and said for him to put the keys in the bag.

Q. Did he do it?

A. Yes.

Q. Then what did you do?

A. I looked at Norma McCauley. She is lying on the couch with her face down, and I saw some blood on her ankles and feet and legs, and I thought maybe she passed out or she had a hemorrhage.

Q. Did you notice anything about her neck?

A. Yes, she had something around her neck.

Q. What did the article around her neck look like?

A. It looked like a wrap.

Q. The wrap she had the night before?

A. Yes.

Q. When you saw Norma there at that time, did she [fol. 165] appear to be alive or did she appear to be dead?

A. I really don't know. I thought she was still alive.

Q. Did she move while you were there?

A. No.

Q. Did she speak while you were there?

A. No.

Q. What did you do when you found her in that condition?

A. I just ran to the telephone. I called her brother—first I called her parent's house.

Q. That is the Thompsons?

A. The Thompsons, yes. When I couldn't get anybody there, I called her brother, Mr. Jack Thompson.

Q. Did you get in touch with him?

A. Yes, and Mr. Thompson was on the telephone and he came over.

Q. Did Mr. Thompson come over there after you had called?

A. Yes, he did.

Q. Between the time you found Norma in that room and before Mr. Jack Thompson came there, did you touch anything or disturb anything in Norma's bedroom, other than the purse and contents?

[fol. 166] A. No, I closed the door and told the children by all means don't go in.

Q. There was nobody in there from that time until Mr. Thompson arrived?

A. No.

Q. This purse that you found on the bed, do you remember the color of the purse?

A. I think it was black; I am not quite sure.

Q. Where did you put that purse?

A. Stayed on the bed where it was.

Q. While you were in the room there that morning did you see a knife anywhere in the room?

A. No.

[fols. 167-177] Cross-examination.

By Mr. Armstrong:

[fol. 178] Q. Now, as far as this bed (indicating) being moved, you first noticed that when you took the older boys [fol. 179] into the bedroom?

A. Yes.

Q. And at the time that you noticed that bed wasn't in its accustomed position, did you remark on it in any way?

A. Yes. I told all the boys, "What happened to this bed? Who pushed it?" And he said, "Maybe we played with it." Sometimes they jumped on it, on top of it, and I didn't pay any attention.

Q. Who was it that said this?

A. The older boy, Craig.

Q. As a matter of fact it was—according to what the boys said—it was the boys who had moved the bed out of its position?

Mr. Alexander: Just a minute.

Mr. Armstrong: Withdraw it.

By Mr. Armstrong:

Q. Then, in other words, when you left Kevin, the little one, in the bedroom, the bed was in its normal, accustomed position, is that right?

A. Yes.

Q. But when you saw the bed—— Strike that. But before you went back into that nursery again, the older boys had been in there, is that right? They were in there ahead of you?

A. Well, yes.

[fol. 180] Q. That's right, and then it was that you testified that you—without saying what anybody said—that you

mentioned to the boys that the bed was moved out of its position?

A. Yes.

Q. And then the boys made a reply to you, the boy made a reply to you, without saying what he said?

A. He said he might have played on top of it.

Q. All right. Now, about this dog, Cinders. Did the dog, in the few nights you had been there—the dog had slept in your room every night?

A. No.

Q. Was there any particular reason why the dog slept in your room this night?

A. No. He usually slept in Mrs. McCauley's room, and since she wasn't there and they left him outside in the hall and he wanted to come in, so I let him stay with me.

Q. But it wasn't ordinarily the custom of the dog to sleep in your room?

A. No.

Q. You say you went to bed about 11:00 o'clock that night?

A. Yes.

Q. And that was your normal hour for retiring?

A. Yes.

[fol. 181] Q. Do you remember what time you had gone to bed the night before?

A. Also around 11:00.

Q. Around 11:00 o'clock. Did you keep the dog in bed with you the night before?

A. No.

Q. Was Mrs. McCauley home the night before?

A. Yes.

Q. Can you tell us how it happened that you kept the dog in your room on this night of July 4th when Mrs. McCauley wasn't home, when you did not keep the dog in your bedroom with you on the night of July 3rd when Mrs. McCauley wasn't home?

A. Mrs. McCauley told me to—when I have the house closed—to be sure and have the dog near me.

Q. When did you have the dog near you on the night of July 3rd?

A. Well, he slept in the hall. You see, I don't know when she came home in the night, what she did with the dog. Some-

times he slept with her and sometimes he was lying in the hall in front of the door.

Q. All right. Now, the night before that—you have told us about the night of July 3rd and the night of July 4th, which would have been Sunday or Monday. How about Saturday night? Did the dog sleep with you that night?

[fol. 182] A. No.

Q. Had the dog ever slept with you in your room, before this particular night?

A. Yes.

Q. Which night?

A. I think it was the first night I was there.

Q. Do you remember which night that was? In other words, do you remember the day that you started working for Mrs. McCauley?

A. Yes, Friday.

Q. Friday?

A. Yes.

Q. Which would have been the first day of July, is that correct?

A. Yes, sir.

Q. What kind of a dog was this dog, Cinders?

A. He was a mongrel, really.

Q. Was he a friendly dog?

A. Yes, very faithful and very friendly.

Q. Did he bark much?

A. Well, to strangers he did, but if he knew somebody very well he wouldn't bark.

Q. The nights you had been there, had you heard him bark much in the evenings?

A. No.

Q. How many times, if you can tell us, in the nights that [fol. 183] you were there, Friday, Saturday, Sunday, and Monday night, did you get out of bed to let the dog outside?

A. I never did.

Q. Just this one occasion?

A. Just the one occasion.

Q. On Monday morning—on Tuesday morning, the early morning hours of Tuesday morning, about 3:00 o'clock?

A. Yes.

Q. You got up and let the dog go outside, and then you say you waited for about twenty minutes?

A. Yes.

Q. You let the dog go outside in case the dog had to do what dogs have to do?

A. Yes.

Q. Then you waited for him to come back in?

A. Yes.

Q. Did you have the door open all that time?

A. No, I left it standing by a little bit.

Q. I didn't get that. Pardon me a second. Will you read the answer, Mr. Reporter?

(Reporter reads the answer.)

Q. What do you mean by standing by?

A. I left it open a little bit.

Q. You left it ajar?

A. Yes.

Q. What did you do during that twenty minute period [fol. 184] of time?

A. I went back in my room.

Q. Did you get back in bed?

A. No.

Q. Well——

A. I may have had a drink of water. I can't really recollect.

Q. How were you dressed?

A. In a bathrobe.

Q. Did you have slippers?

A. And slippers.

Q. You say you went to bed around 11:00 o'clock, I believe. I am talking about the night of July 4th, is that right?

A. Yes.

Q. After you went to bed, did you do anything besides going to sleep? Did you read or listen to the radio, or anything like that?

A. Nothing.

Q. Did you hear Mrs. McCauley return to the home that night?

A. No, I didn't.

Q. And as far as during the night was concerned, did you hear any sounds of any kind?

A. Nothing.

Q. Where was the telephone located in the McCauley [fol. 185] home?

A. In the kitchen.

Q. And——

A. Some sort of a divider.

Q. Now, I will show you here what is marked here as a little thing called "breakfast bar" on the diagram. Here is a kitchen (indicating), and here is the dining area (indicating), and here is the breakfast bar (indicating). Is that what you are talking about?

A. Yes.

Q. That is where the phone was located?

A. Yes.

Q. How many instruments were in the house?

A. There was another one in Mrs. McCauley's bedroom.

Q. There were two instruments in the house?

A. Yes.

Q. Now, while you were there, I take it that you had had occasion to hear the phone ring, is that right?

A. Yes, sir.

Q. And when the phone rang, it rang in both the kitchen and it also rang in Mrs. McCauley's bedroom?

A. In the kitchen you could hear it better.

Q. It was louder in the kitchen?

A. Yes.

Q. Now, here we have on this diagram what is indicated [fol. 186] as "kitchen", and then we have an open space that goes into the entrance hall.

A. Yes.

Q. Was there a door here (indicating), or was that just an open area?

A. There is a little door between the entrance hall and the kitchen, yes.

Q. What kind of a door is it?

A. It is a push door. You push it closed. You don't mean the front door?

Q. No, I don't mean the front door. If you will look at the diagram here, it says "kitchen" and "entrance hall". We have a space here and all the other spaces we have—on the other spaces we have doors indicated, but here we don't have any door. Is there a door there?

A. There is a push door, but it was never used.

Q. It was usually kept in an open position?

A. Yes.

Q. When you got up on July 5th and went into the kitchen, you fixed the breakfast for the children, was the door open or closed?

A. It was open.

Q. It was in its customary position?

A. Yes.

Q. We have indicated on the diagram an area called "hallway". We have the entrance hall and then we have here [fol. 187] a thing that is called "hallway". Was there a door here (indicating), between what is indicated as closets and your room (indicating)?

A. Yes, there is the entrance to the living room.

Q. But in this space called "hallway" right here, my question is, was there a door that closed, separating this from the rest of the house (indicating)?

A. No.

Q. There was no door?

A. No.

Q. That was open area, too?

A. Yes.

Q. When you went to bed, did you leave your door open or closed?

A. I left it open.

Q. You left your door open when you retired for the night?

A. Yes.

Q. So then when you went to sleep that night at about 11:00 o'clock, the condition of the house was that there was an open area—this door was open (indicating), and there was no door here (indicating), and your door was open?

A. Yes, but not very far.

Q. Your door was open enough?

A. Yes.

[fol. 188] Q. Your purpose in leaving it open was to hear the children if they made any noise, probably?

A. Yes.

Q. During that night, before you heard the dog bark, and after you had, yourself, retired for the night, did you hear the telephone ring during the night?

A. No.

Q. At any time?

A. No.

Q. You are absolutely certain about that?

A. I am sure.

Q. In the evenings that you had been there, before Mrs. McCauley's death, had she had occasion, or—strike that.

In the evenings that you had been there before Mrs. McCauley's death, had the phone rung after you had retired so that you had to get up and answer it at any time?

A. I think her father called up once in the night. That is all I can recollect.

Q. You had a call once in the night?

A. Yes.

Q. And on that occasion you had to get up and put your robe on and come out and answer the phone, is that right?

A. Yes, sir.

Q. And you were able to hear the phone ring from your [fol. 189] room?

A. Yes.

Q. So when this phone rang in the kitchen and in Mrs. McCauley's room, it was clearly audible in your room, is that right?

A. Yes, sir.

Q. Not the one from the bedroom, but the one from the kitchen was audible?

A. Yes.

[fol. 190] Q. Whenever the phone rang it rang in both places?

A. Yes.

Q. There was a bell on this one and a bell on this one in her room, is that right?

A. Yes.

Q. As to this telephone, did Mrs. McCauley have a little book of some kind in which she kept telephone numbers?

A. I don't know anything about that.

Q. I don't mean the large telephone directory like the directory you look up strangers' numbers, but I mean a little personal directory of some sort next to the phone?

A. No, there was only a blackboard that sometimes the children used with names of doctors and nearest relatives in case they are needed.

Q. That was where?

A. That was in the kitchen.

Q. That was in the kitchen—and what was that on?

A. On the blackboard.

Q. On the blackboard?

A. On the blackboard.

Q. And the blackboard was hanging up some place?

A. The blackboard was hanging up.

[fol. 191] Q. Where was it hanging up in the kitchen?

A. Near the stove.

Q. We have here on the drawing indicated "Built-in stove," it was over in this area, a little blackboard hanging up?

A. Right next to that, yes.

Q. You say there were doctors' numbers on there?

A. Doctors' numbers in case we needed something.

Q. Then there were the family numbers on there?

A. The family numbers.

Q. Do you remember if the number of Pat Gallagher was on there?

A. No.

Q. Do you remember that name?

A. No.

Q. You can say definitely that on this little blackboard the name of Pat Gallagher was not there?

A. It was not there.

Q. You are familiar with Mrs. McCauley's bedroom, of course; that is where you went to turn down the bed, is that right?

A. That's right.

Q. And the telephone is located where in relation to the bed?

A. It was moved very often; sometimes it was in front as you come in you could see it, and sometimes it was moved [fol. 192] further down where the mirror was.

Q. And the mirror was located here in the area marked "Dresser"?

A. Yes.

Q. Sometimes the phone was down in this area, indicating the southernmost part of the room where the word "Dresser" appears on the diagram?

A. Yes.

Q. And did you say that sometimes it was up here around the headboard part of the bed?

A. On the headboard.

Q. Sometimes it was there?

A. Yes, sometimes it was there.

Q. Did you notice whether she had a personal notebook or a personal telephone directory near there any place in her bedroom?

A. No.

Q. You never noticed it or it wasn't there?

A. No, I never noticed it and it wasn't there. I never noticed it.

Q. When you came into Mrs. McCauley's bedroom after Kirk had told you—I think you said he told you, "Mommy is in a mess," is that right?

A. Yes.

Q. You went in the bedroom of Mrs. McCauley?

A. Yes.

[fol. 193] Q. You say you saw blood on her legs and feet, is that correct?

A. That's right, yes.

Q. And I believe you also went on to say you thought perhaps she had had a hemorrhage?

A. Yes.

Q. So then at that time didn't you go over to touch her on the shoulder?

A. No.

Q. To arouse her and see how she was?

A. No, I was much too excited. I had the children sitting at the breakfast table, and I just closed the door.

Q. You didn't call her name or anything?

A. No.

Q. When you got up at 3:00 o'clock in the morning to let the dog out was the light on in Mrs. McCauley's room?

A. I don't know. The door was closed.

Q. What was on the floor in the hall that is marked "Hallway" right here?

A. I don't know.

Q. Was it carpeted or was there a linoleum on it?

A. Yes, carpeting, heavy carpeting.

Q. When you got up at 3:00 o'clock the door in Mrs. McCauley's room was opened or closed?

[fol. 194] A. It was closed.

Q. If you know, when the door was closed, was it possible to see a light coming from under the door?

A. No, not much, because there was a light outside on the street that shines through the bathroom, and so you couldn't see a light there.

Q. If the rest of the house was dark and there were a light on in this room, you are saying that you couldn't see the light?

A. No, you couldn't see it because there's a light outside in the street that sends light in the house.

Q. There isn't any light outside in the street that shines, that would shine in the area of the hallway, is there?

A. It would if the bathroom door is open.

Q. This bathroom door—the bathroom here has windows up in where the "W's" are indicated, indicating the northernmost part of the bathroom wall—there is a small "W"; there are windows there?

A. Yes.

Q. Are those windows clear or frosted glass?

A. The top is clear and the bottom is frosted.

Q. The street light is located out there in the street just beyond that, is that right?

A. Yes.

[fol. 195] Q. When you got up to let the dog out do you remember whether the bathroom door was opened or closed?

A. Opened.

Q. Do you remember whether it was open?

A. I left it open.

Q. At the time you let the dog out you are certain it was open at that time?

A. Oh, yes.

Q. You said just before you retired you went to Mrs. McCauley's room to turn down the bed to get it ready for her to occupy, is that right?

A. Yes.

Q. So you turned down the sheets on one side?

A. Yes.

Q. Did you do anything else in the room at that time that you recall?

A. No.

Q. When was the last time you can remember that you had been in the room before that?

A. After I turned the bed down I never went in there any more.

Q. I don't mean that; I mean before you turned the bed down when had you been in Mrs. McCauley's room before that, that you can recall?

A. I think I sent the children to look in there; they went in there to see what time it was.

[fol. 196] Q. That would make the children go in, but how about you; had you been in there before that?

A. No, I can't recollect.

Q. Let me direct your attention; before the older children came home, and after you put Kevin to bed, didn't you go in there to tidy up a little bit and straighten up things?

A. No, the children wanted to look at television when we first came home; I said, no, it would be too late.

Q. Where was the television set located?

A. In the bedroom.

Q. In Mrs. McCauley's room?

A. Yes.

Q. There was no television set located in the living room?

A. No, no.

Q. Is that right, no television set in the living room?

A. No.

Q. Part of your duties, of course, were to keep Mrs. McCauley's room tidied up along with the rest of the house, is that right?

A. Yes.

Q. Were there ash trays in Mrs. McCauley's bedroom?

[fol. 197] A. I can't recall.

Q. You don't remember whether or not there were any ash trays?

A. No.

Q. Let me ask you this, if it will help to refresh your recollection: that at the time you came into the bedroom the next morning after Kirk had gone in there and told you his mother was in there, didn't you find an ash tray full of cigarette butts at that time?

A. I didn't even look at it.

Q. I know you weren't looking specifically for it, but wasn't that one of the things that you noticed?

A. No.

Q. Haven't you told people since this event happened that there was an ash tray there full of cigarettes?

Mr. Alexander: Just a moment, not proper cross examination and I object to that question.

The Court: Objection sustained.

By Mr. Armstrong:

Q. Now, about this purse and keys, you say the purse was on the bed?

A. Yes.

Q. And there were keys on the floor?

A. There were keys on the floor.

Q. And first you said, I believe, that there were contents [fol. 198] scattered on the floor, and you went down to tell us it was mostly keys?

A. I noticed the keys first of all because the children always like to play with keys. So I told the little one to put them back.

Q. Were these keys all in one little pile or scattered around the floor?

A. No, they were scattered.

Q. And the little one picked up the keys that were all over the floor?

A. Yes.

Q. How long had you been in the room at this time when the little one came in and you had him pick up the keys?

A. I called him right back.

Q. As I understood your testimony, when you saw Mrs. McCauley and saw her condition, you had the little children get out of the room, is that right?

A. Yes.

Q. But before you had them get out of the room you had one of the little ones pick up the keys on the floor?

A. Yes, he went with me back, and I said, "Pick up the keys."

Q. What did you do, as you recall, while the little one was picking up the keys?

[fol. 199] A. Nothing.

Q. Where did you stand?

A. Standing right in the door.

Q. Was the light in the bedroom on or off?
A. No, it was off.
Q. Were any lamps on?
A. No.
Q. You didn't notice any, anyway?
A. No.
Q. They could have been on and you just wouldn't have noticed?
A. I would have noticed, yes, but the excitement was so I didn't pay any attention to all those things.
Q. Were the drapes open or closed?
A. I think they were closed.
Q. Did you notice anything peculiar about the drapes?
A. No.
Q. You said nobody [illegible] on the floor as far as the contents of the purse was concerned, was there anything else on the floor?
A. No.
Q. Anything which was removable?
A. No.
Q. Any [illegible] clothes on the floor?
A. No.
[fol. 2[illegible]] Q. Now there is considerable difficulty in comparing anything like that on the floor.
A. No, I was only referring to the keys. Those articles were always kept there and using them.
Q. You said a while ago that you went right into the bedroom and told [illegible] something wrong with the window.
A. Yes.
Q. Just before that you had left the bedroom and went in the kitchen with [illegible] the breakfast?
A. Yes.
Q. He was eating breakfast?
A. Yes.
Q. What he dressed or in his pajamas?
A. No, he was dressed.
Q. Do you remember whether or not he had any coat with him at the breakfast table?
A. No.
Q. You don't remember or he did not?
A. No, I don't remember.

Q. Do you remember whether he carried any toy with him into his mother's room?

[fol. 201] A. No, but he was always—he always had toys in his mother's room, little guns and things, and was taking them away, and they left them there.

Q. When the little boy went into his mother's room and when you went into the mother's room, you came in through this door, is that right, the door that is marked D-3?

A. Yes.

Q. You came in here and Mrs. McCauley was—well, you tell me where in this room the chaise lounge was located.

A. Nearer to the drapes and nearer to the windows.

Q. Which would be down in this area (indicating)?

A. Yes.

Q. Indicating the southernmost part of the room?

A. Yes.

Q. This chaise lounge was over this side or to this side of the room?

A. The other side.

Q. This side (indicating on diagram)?

A. Yes.

Q. Indicating the easterly part of the room—near the big windows?

A. Yes.

Q. Now, did you go over to the chaise lounge at all?

A. Yes, I did.

[fol. 202] Q. I mean, did you touch the chaise lounge that she was on?

A. No.

Q. Did the youngster go over to the chaise lounge at all?

A. No, I don't think so. He just came in the room to call and he didn't get any answer; he came back and said, "Mommie—something happened——"

Q. But you don't know whether the youngster went over there or not?

A. I don't think he did. He didn't even have time. It was only a minute that he was there.

Q. And what area, in respect to this bed, in what area with reference to this bed were these keys on the floor?

A. Right next to the bed.

Q. Were they down at the bottom of the bed?

A. Over——

Q. Or over to the side of the bed?

A. No, on the floor.

Q. Were they on the floor at the side of the bed, or at the foot of the bed?

A. On the side, more on the side.

Q. On this side or this side (indicating on diagram)?

A. Well, right here (indicating on diagram).

[fol. 203] Mr. Armstrong: The witness is indicating the area to the west of the rectangle in the bedroom marked "bed" as being the area where the keys were on the floor.

Q. So that while this child was picking up the keys, you were standing, then, where?

A. At the door.

Q. You were standing clear up here in the doorway?

A. Yes.

Q. From where you were standing up here in the doorway could you see Mrs. McCauley's body?

A. Oh, yes.

Q. You could see from here over to here?

A. Yes, you can.

Q. You say you were standing in the doorway, right here in the doorway that is marked "D-3", is that about the position?

A. Yes.

Q. You were standing at "D-3"?

A. Yes.

Q. Weren't you a little farther in the room than that?

A. When the boy called me, I went a little bit farther in there and I saw the scattered things and called the boy back.

Q. What is the farthest you ever went in the room?

A. As far as the bed.

[fol. 204] Q. You went as far as the bed?

A. I went as far as the bed.

Q. But you didn't go beyond the bed?

A. No.

Q. Didn't you notice anything else—was there anything else in the purse before you replaced the keys in the purse?

A. No.

Q. So the purse had nothing in there but the keys when you got through putting the keys back in there?

A. The boy put the keys in for me, in there. He might have put something else, but I told him to take the keys and not to touch anything else.

Q. And you didn't touch anything else in this room at all?

A. No, I did not, no.

Q. When you came in this room, was the condition of the room light or dark?

A. There was no lights on.

Q. Well, how was the light outside; was it daybreak, morning?

A. Daylight.

Q. Was the sun shining?

A. Not bright sunshine, but light, very light.

Q. Could you see around in the room all right?

A. Yes.

[fol. 205] Q. You didn't turn on the light to see the keys on the floor?

A. No.

Q. You were able to see those?

A. Able to see those, yes.

Q. I will show you that is marked "A" for identification, and ask you if you recognize this picture.

A. Yes.

Q. Will you tell us what that is a picture of?

A. That is a picture of the bedroom of Mrs. McCauley, died; and this is the bed put down, and the keys were lying here, and the clothes here on top——

Q. Wait a minute, when you say the keys were lying here, we have a record that we have to——

If you will just mark the area where the keys were on the picture.

A. Right about here.

Q. Scattered about, or in one place?

A. Right here.

Q. Tell me if I am doing this wrong (marking on diagram). Is that about right?

A. Right.

Q. All right, drawing a little circle and marking keys indicating the position of the keys.

In this picture there is also a piece of furniture commonly called a chaise lounge?

[fol. 206] A. Yes.

Q. Is that the chaise lounge that was customarily in that room?

A. Yes, it is always there.

Q. And there seems to be a person on that chaise lounge. Do you recognize that person?

A. Yes, Mrs. McCauley.

Q. That is about the way she looked when she came in that room?

A. Yes.

Q. I call your attention to these drapes; they were in this closed position when you came in?

A. Yes.

Q. I further direct your attention to some stains or spots, something like that, up here on these drapes. Do you recognize those?

A. No. You see, I don't pay any attention to them.

Q. Well, later when you went back into the room did you notice anything up there?

A. On those drapes—I never, no.

Q. I mean much later, after the police came.

A. Oh, I have never been there—I mean, after I telephoned I never went in there any more.

Q. You have never been in that bedroom since?

A. No, after they were called.

Q. After the police came, did you leave the McCauley [fol. 207] home?

A. No, I took—I was taken to the parents' home with the little boy.

Q. With the youngest boy?

A. With the youngest boy.

Q. How long did you stay at the parents' home with the youngest boy?

A. Oh, for quite a long time.

Q. Can you tell us how long, give us an idea of what you mean?

A. Maybe two weeks.

Q. Maybe two weeks?

A. Maybe longer.

Q. After this time, this two weeks or longer, you have not been employed by the Thompsons or the McCauleys?

A. Oh, yes, I was, but the things were taken down, as much as I remember, somebody took them down and took them to the cleaning place.

The Court: Speak louder, please. It is hard to hear you.

The Witness: The drapes were taken off. It was before I came back. They have been cleaned—the whole house.

Q. Then at some time since this happened you have been back in Mrs. McCauley's bedroom; you have been back in there since the time you discovered the body there, haven't [fol. 208] you?

A. Oh, yes, but long after.

Q. But you never again were in the room while the drapes were up, and so forth?

A. No.

Q. You say—are the drapes hanging there now, to the best of your knowledge?

A. No, they are not there any more.

Q. The drapes are not there any more?

A. No.

Q. Other drapes are on those windows?

A. No.

Mr. Alexander: That is immaterial, if the Court please. I object——

The Court: Yes.

Mr. Armstrong: Well, I am just concerned about what happened to the drapes—that last may be stricken out.

May we have the afternoon recess now?

The Court: Very well. We will taken the afternoon recess at this time—(jury begins to leave)—just a moment, please. Be seated until I excuse you.

Do not discuss the case among yourselves nor talk to anyone about it, nor allow anyone to talk to you about it. Do not form nor express any opinion about the case until the matter is finally submitted to you.

(Afternoon recess of Friday, November 18, 1955.)

[fol. 209] The Court: Let the record show the jury is present. You may continue, Mr. Armstrong.

Q. By Mr. Armstrong: As far as this purse was concerned, when you left the room to go to make these telephone calls, you left the purse on the bed?

A. I didn't touch it.

Q. As far as the position of the purse on the bed is concerned, was it up near the head of the bed, or on the body of the bed, or where; you just indicate about where it was.

A. (Witness indicates on photograph.)

Q. If you will do that again, please, just show me where you saw it on the bed, where it was.

A. About here (indicating on photograph).

Q. The purse was about here. All right. We will make an "X" on the picture, indicating the purse.

And you didn't go back into this room again and move that purse at any other time?

A. No.

Q. Were you there in the home at the time the police arrived?

A. Yes, I was busy with the children.

Q. So at the time you directed the police—I take it you showed the police where Norma McCauley's bedroom was, is that right?

A. No, no, young Mrs. Thompson came in and showed [fol. 210] them where the room was.

Q. You mean Jack Thompson's wife?

A. Yes.

Q. From the time you left that purse on the bed and went into this room, you didn't touch anything in the room?

A. No, nothing.

Q. It is a correct summary of your testimony to say that the closest you ever got from the doorway of the room—we will use this instead—the closest you ever got to where Mrs. McCauley was lying down in this position was somewhere in this area right here (indicating on diagram)?

A. Yes.

Q. Indicating a position approximately in the middle rectangle marked "bed"?

A. Yes.

Q. It is your positive recollection at no time did you go over to Mrs. McCauley?

A. No.

Q. And it is also your recollection you didn't at that time call her name?

A. No.

Q. You didn't say, "Mrs. McCauley!"?

A. No.

Q. You didn't say, "What's the trouble", or anything [fol. 211] like that?

A. No, I just went right there to the telephone.

Q. Which did you do first, did you have Kirk pick up the keys first and then go to the telephone, or did you go to the telephone and have Kirk pick up the keys?

A. No, I told Kirk to pick up the keys, and the telephone was hanging already on the hanger—I mean, somebody else called and wanted to come in.

Q. I don't understand.

A. When I was——

The Court: Can you speak a little louder; it is very difficult to hear you.

The Witness: When I was at the breakfast table, the telephone rang and I answered it, and the cleaning man wanted to know——

By Mr. Armstrong:

Q. Don't tell us what he said; this was the cleaning man that you had a conversation with?

A. Yes.

Q. You had a conversation with him on the telephone?

A. Yes.

Q. And you left the phone with him already on it?

A. Still on, yes.

Q. And then you went into the bedroom and you saw Mrs. McCauley, and then where was Kirk when you first went into the bedroom?

A. He came into the bedroom first when I told him to [fol. 212] get in and wake his mother up.

Q. You told him to go in and wake his mother up?

A. Yes.

Q. And then he came back into the kitchen where you were?

A. Yes.

Q. And I think you said he said, "Mommie is in a mess"?

A. Yes.

Q. You recall those were his exact words?

A. Yes.

Q. And then when he said that, you went into the bedroom to look?

A. Yes.

Q. Is that right?

A. Yes.

Q. When you went into the bedroom to look, where was Kirk?

A. He was right behind.

Q. All right. Then when you saw Mrs. McCauley down there on the chaise lounge, my question is did you at that time return to your telephone conversation, is that what you next did?

A. No, I told the boy to pick up the keys, first, and then I closed the door and went back to the telephone and told the man to wait.

[fol. 213] Q. You told the man to wait?

A. Yes.

Q. That was on the phone?

A. Yes.

Q. What did you next do?

A. I told him to stay where he was. He was down in his office, or where I don't know, but I told him I had to do some telephoning first.

Q. So then he left the line?

A. Yes.

Q. And you called the Thompson home?

A. Called the Thompson home.

[fol. 214] Q. And there was no answer there at all?

A. No.

Q. While you were doing this telephoning, where were the children?

A. At the breakfast table. I told them to stay there.

Q. Were you telephoning from the telephone in Mrs. McCauley's room or from the kitchen phone?

A. The kitchen phone.

Q. You are certain that when you saw the condition of Mrs. McCauley's room, that you didn't pick up the bedroom extension and tell the cleaning man to get off the line?

A. No, I closed the door and I told them they couldn't go in there.

Q. Did you have a key to the McCauley house?

A. No, there was an extra key in the garage.

Q. And that key was to what?

A. Well, when somebody wanted—when the key was lost and the children sometimes banged the doors and locked us out, somebody could get in again.

Q. And the key fitted what?

A. The front door.

Q. The key was to the front door?

A. Yes.

Q. You knew where that key was in the garage?

[fol. 215] A. Yes.

Q. Where was that key in the garage? We have indicated here a garage. Would you indicate here? Was the key on the shelf or hanging on the wall?

A. I think it was on the icebox. There was a refrigerator in the garage.

Q. Would you indicate for me, please, where the refrigerator is in the garage?

(The witness approaches the diagram.)

Q. This is Somera Road up here (indicating), and this is the driveway.

A. It would be here, then (indicating). They told me it was on top of the shelf.

Q. You say there was an icebox right here (indicating).

A. Yes. The key was supposed to be there or next to it on the shelf (indicating).

Q. Am I changing the icebox? I put it at the right place, about here (indicating)?

A. Yes.

Q. We will mark this little rectangle——

A. (Interrupting) There were some shelves up there (indicating).

Q. I.B. for icebox. There were some shelves where?

A. Right here across.

[fol. 216] Q. I think you have got this backwards now. This was the door to the garage (indicating). There weren't shelves on the door?

A. There were shelves right here (indicating), almost to the door. They told me that the key was either there (indicating) or there (indicating), but I never used it.

Q. You had been told the key was either on top of the ice box or on these shelves, is that right (indicating)?

A. Yes.

Q. We will mark the shelves in here (marking same). As far as you personally were concerned, you didn't have a key to the McCauley house?

A. No.

Q. I believe you told us earlier that before you retired for the evening that you went around to be sure that all the doors were locked, is that right?

A. Yes.

Q. Now, there appear to be doors here in the nursery (indicating). Were these doors here (indicating)?

A. Yes.

Q. These were doors going out to the back, is that right?

A. Yes.

[fol. 217] Q. What sort of locks did those doors have on them?

A. Well, some of them had just pad locks and another one had a chain.

Q. A bolt and chain sort of thing?

A. Yes.

Q. But the one door had a padlock?

A. Well, not a padlock. You know, when you push to close it, they close. You don't have to have a key for that.

Q. You mean the door had a little thing in the doorknob that you could turn, and that made the door in a locked position?

A. Yes.

Q. It was just a lock within the doorknob itself?

A. Yes.

Q. I see. You secured these doors here in the nursery, is that right (indicating)?

A. Yes.

Q. You checked both those doors to be sure they were closed?

A. Yes.

Q. Now, these would be the doors that are on the northernmost part of the room marked "Nursery," and one of them is marked D 1, and another one on the east side of the [fol. 218] indicated door on the west side is not marked?

A. Yes.

Q. Which one had the lock inside the door handle?

A. The two first ones and the other one wasn't good closed because there was something wrong with the lock.

Q. What do you mean by the two first ones?

A. Well, the one where you come in, that leads to the outside. Two has windows and one is a door.

Q. Was this the door that had the door in the handle?

A. Yes.

Q. I mean the lock in the handle.

A. Yes.

Q. D-1?

A. Yes.

Q. And you checked that door?

A. Yes.

Q. At the time you checked it, do you remember whether it was locked or unlocked?

A. Well, it was supposed to lock, but it didn't really lock very well.

Q. Well, in other words, you mean that door couldn't be locked? It could be opened from the outside?

A. Not very well.

[fol. 219] Q. There was no bolt and chain?

A. There was no—the chain worked but the lock didn't work.

Q. There was a chain on this door (indicating)?

A. Yes.

Q. When you checked this, you checked that chain to see if it was fastened?

A. Yes.

Q. It was fastened when you looked at it?

A. Yes.

Q. Getting to this door here (indicating), what kind of a fastening did it have?

A. One is only a window.

Q. This wasn't a door over here?

A. The last one is a door, between the two doors——

Q. (Interrupting) These are windows, indicating the northernmost part of the nursery on the east-west wall (indicating)?

A. Yes.

Q. But this one on the far west of the nursery is a door, is that right (indicating)?

A. Yes.

Q. And what kind of a lock did that have?
A. It has a key on and a chain.
Q. It had a key and a chain?
A. Yes.
[fol. 220] Q. You checked that to be sure it was secure?
A. Yes.
Q. Was the chain fastened when you looked at it?
A. Yes.
Q. The chain was fastened?
A. Yes.
Q. We have down here at the bottom what has been indicated as Norma's room, a place called D 5, which looks like a double door, is that right?
A. Yes.
Q. That is a double door?
A. That's right.
Q. That leads out into the back yard?
A. Yes.
Q. What kind of a fastening did that have on it?
A. Well, it has a lock.
Q. In other words, it has a little handle lock where you turn the thing and a bolt slips into the jam on the other side?
A. Yes.
Q. Did you check that?
A. It was supposed to be always closed.

The Court: The question was, did you check it?

By Mr. Armstrong:

Q. When you were checking to see that the house was locked up, did you check that one?
A. Well, we checked it in the morning.
[fol. 221] Q. I am talking about just before
A. (Interrupting) No, I didn't look at it any more, but it was closed in the morning.
Q. Just before you went to bed, you told us that you checked the house to be sure that it was all locked up?
A. Yes.
Q. You went to the children's room and checked their door to be sure they were secure, and they were?
A. Yes.

Q. Did you go down to check this door (indicating) to see that it was secured?

A. Not in the evening.

Q. That answers the question. How about this door out of the kitchen, D-9. What kind of a door was that?

A. It was also a lock and a chain.

Q. A lock and a chain?

A. Yes.

Q. Before you went to bed, did you look at that one?

A. Yes, it was also closed.

Q. It was closed, and the chain was in place, is that right?

A. Yes.

Q. And then we have D-8. I take it this was the big [fol. 222] front door?

A. Yes.

Q. How did it lock?

A. It also locks with a special lock.

Q. Did it have a chain, too?

A. No.

Q. And what kind of a lock did it have?

A. Well, it was an automatic lock, and you have to have a key to open it.

Q. In other words, it had one of these locks inside the door?

A. Yes.

Q. You could open it from the inside by turning the button on the doorknob?

A. Yes.

Q. Did you check it that night, too, the front door?

A. Yes.

Q. And the front door was secure?

A. Yes.

Q. Here we have sliding glass doors (indicating) indicated on the west side of the diagram leading out into the patio?

A. Yes.

Q. How did the sliding doors secure? What kept them from being opened by someone outside?

[fol. 223] A. They were supposed to be locked, too, but there wasn't any lock. You push very hard, and you can't very well open it from the other side.

Q. You just shove that door, that sliding glass door?

A. Yes.

Q. How do you get it open from the inside after you have done that?

A. From the inside, you can open it.

Q. Does it have a handle from the inside?

A. A little thing that you push with your hands.

Q. But as far as the—as far as locking it was concerned, there was no lock on it?

A. No good lock, no.

Q. Did it have any lock?

A. Not a special lock. They only told me when you push it hard, it is locked. Nobody can get in.

Q. After you pushed that door good and hard so that it closed tightly, what did you have to do with it to get it open in the morning, or whenever you wanted it open again?

Was there a latch that undid?

A. No.

Q. Did the garage door have some kind of a handle on it?

A. No, you just had to push it very hard to get it open. [fol. 224] Q. Did it have something to take hold of to push it open hard?

A. Yes, it is like a handle, you know. I don't know how you could call it.

Q. A little thing to take hold with your hand?

A. Yes.

Q. As a matter of fact, didn't you have to turn that?

A. Well, a little bit.

Q. And get it to release in its catch?

A. Yes.

Q. It did have a catch that it is secured in?

A. Yes.

Q. As far as this door is concerned (indicating) from the dining room these sliding glass doors, you had pushed that to the place where it caught, is that right?

A. Yes, sir.

Q. Is this a door here in your room (indicating), going outside, or was that a window?

A. It was a door.

Q. That was a door?

A. Yes.

Q. What kind of a lock did that door have on it?

A. It had a chain and a lock.

[fol. 225] Q. And did you check that before you went to bed?

A. Yes, sir.

Q. Was it secure?

A. Yes.

Q. Was the chain fastened?

A. Yes.

Q. The chain was fastened and the lock was fastened? At least the chain was fastened, anyway?

A. The lock was, too.

Q. Now, when was the last time—you have been telling us about what you did just before you went to bed that evening, haven't you?

A. Yes.

Q. Now, when was the last time before that that you had had occasion to check this door down here (indicating) that we have marked B-5?

A. It was just before I went to bed.

Q. Just before you went to bed you had checked this door marked D-5 down here in Norma's room?

A. Yes.

Q. What kind of a lock did it have on it?

A. Well, it was one of those little push-buttons.

Q. It had a push-button?

A. Yes.

Q. And you checked that?

A. Yes.

[fol. 226] Q. And the push-button was secure?

A. Yes.

Q. And the door was locked?

A. Yes.

Q. When was it you did that?

A. Just before I went to bed.

Q. We are still talking about July 4th?

A. Yes.

Q. Let me ask you this, Miss Dromtra. Do you have a distinct recollection of checking that little push-knob on that door? Do you remember doing that right now as you are telling us about it?

A. I told you, when the children went to bed I went over and looked to see if it was closed, and this was closed, too.

[fol. 227] Q. You checked that lock at that time?

A. Yes.

Q. Was that when you put the children to bed, or just before you, yourself, went to bed?

A. I can't recollect exactly what time it was, if it was right after the children went to bed or a little bit later. I only know the front doors and things—I went there just before I went to bed again.

Q. Sometime that evening, after the children went to bed and before you went to bed, you have a distinct recollection of examining that knob and being sure that door was secure?

A. Yes.

Q. And the door was secured when you examined it?

A. Yes.

Q. You didn't have to lock it?

A. No.

Q. It was already locked?

A. Yes, sir.

Q. Now, about the children's beds up here in the bedroom (indicating). You say after the older children had gone in the bedroom here, you found this bed (indicating) moved slightly upward and outward from its normal accustomed position?

A. Yes.

Q. You say this was whose bed (indicating)?

[fol. 228] A. Craig's bed, the older one.

Q. And Craig, the older boy, always liked his bed to be in the right place?

A. Yes.

Q. Before he got into the bed, did you put the bed back where it belonged?

A. I pushed it back.

Q. At the time you pushed the bed back, how far would you estimate that this bed was from this closet door?

A. Maybe a foot or so.

Q. We have a ruler here. If you will take your hands and put them any place on the ruler and show me in distance.

A. Maybe like that (indicating).

Mr. Armstrong: The witness is indicating 15 inches on the ruler.

Q. If I hold it like this (indicating), and show you this distance from where my thumb is to the end of the ruler, which is 15 inches, that occurs to you to be about the distance the bed was from the wall?

A. Yes.

Q. Did these closet doors open out?

A. Yes.

Q. They swung out?

A. Yes.

Q. Well, after you got this bed back in position where [fol. 229] it belonged, the bed was in such a position that these doors could be opened? (Indicating).

A. No, not unless they were pushed way back.

Q. Unless the bed was pushed away?

A. Yes.

Q. But with the bed where it was when Craig went to bed in it, these doors couldn't be opened without moving the bed again, is that right?

A. No, you would have to push the bed.

Q. That's right. You would have to push the bed, and if you didn't push the bed you couldn't open the doors?

A. No. The bed might have been pushed away in the morning.

Q. You are not answering my question: With the bed in the position you have indicated, it was after you fixed it again the way it should be, fifteen inches——

A. (Interrupting) It might be a little bit more. I think it was a foot.

Q. That would be less. With the bed like it was, after you had rearranged it, these closet doors could not be opened without moving the bed again, could they?

A. No.

Q. Now, you got up first the next morning, didn't you?

A. Yes.

Q. You said you woke up at 6:30?

[fol. 230] A. Yes.

Q. And when you woke up, the house was quiet?

A. Yes.

Q. Where was the dog, if you know?

A. He was in the kitchen.

Q. At the time you woke up, the dog was in the kitchen?

A. Yes.

Q. He wasn't in your bedroom?

A. I mean, he was in my room, and I let him out of the room when I got up.

Q. You let him out of the room, but you didn't let him out of the house?

A. No.

Q. You slept with your door open, didn't you?

A. Yes; not very wide open.

Q. Did your bedroom door open in or out?

A. Out—no, it was in.

Q. It opened in?

A. Yes.

Q. And was your door open wide enough that the dog's paw would fit in the opening?

A. Oh, yes.

Q. Then when you got up about 6:30 that morning, you were the only one up, is that right?

A. Yes.

[fol. 231] Q. And the children were all still in bed?

A. Yes.

Q. And you went in and awakened the children?

A. Yes.

Q. Now, you said that first the little one, Kevin, got up, is that right?

A. Yes.

Q. And you gave him—you were fixing some breakfast, so you gave him some?

A. Yes.

Q. And the older boys remained in bed?

A. Yes.

Q. Now, was Kevin having his breakfast in the high chair?

A. Yes.

Q. While Kevin was in his high chair, did you go back into the room to wake the other children up?

A. Yes, I did.

Q. When you went back in the room the second time, the children were still in bed, asleep?

A. Yes, sir.

Q. Now, when you went in the room the second time and you awakened the older boys and summoned them to breakfast, did you notice at that time the condition of their beds?

A. Well, the one bed was a little bit further away again. It can happen sometimes when they are in bed.

[fol. 232] Q. Which bed was a little bit further away?

A. The one next to the closet.

Q. This was a little bit farther away again than it had been before?

A. Yes.

Q. And the boy that was in the bed was asleep?

A. Yes, asleep.

Q. Does this bed have a caster or roller underneath it (indicating)?

A. Yes.

Q. It rolls on casters?

A. Yes.

Q. You say sometimes you noticed the beds would roll a little bit while the children were in them?

A. Yes, sometimes.

Q. In other words, frequently when you had come in there in the morning these beds wouldn't be in a nice even row?

A. They don't move so much.

Q. And the boy who slept in this bed, about how old is he?

A. Eight.

Q. And while you had been there, had you heard him get up in the night to go to the bathroom?

A. No.

Q. Had he gotten up during the night and gone un- [fol. 233] assisted to the bathroom?

A. No.

Q. Somebody took him to the bathroom, is that right?

A. Yes.

Q. When you went to bed at 11:00 o'clock, did you get any of the boys up to go to the bathroom?

A. No.

Q. And during the night when you got up for the dog at 3:00 o'clock, did you take the children into the bathroom then?

A. No.

Q. Did Kevin—rather, did Craig or Kirk?

A. No, they didn't go to the bathroom.

Q. I beg your pardon?

A. They didn't go to the bathroom. I did not take them.

Q. While you were there, did the boys wet their beds?

A. No.

Q. They were not bed wetters, either of them?

A. No.

Q. When you say during the night that the boys didn't get up and go to the bathroom; that is, you didn't hear them?

A. I would hear them.

Q. Do you think that if the boys got up and—had it been [fol. 234] your experience before whenever the boys got up to go to the bathroom, you could hear them?

A. Yes.

Q. You could hear the toilet, if it flushed?

A. Yes.

Q. You could hear the boys moving from their room into the bathroom?

A. Yes.

Q. As far as your waking up at 3:00 o'clock in the morning, you said, I believe, a little while ago that the dog was figiting; is that what you said?

A. Yes.

Q. That doesn't tell us very much what the dog was doing. Describe what the dog was doing.

A. He was awake and rolled around, and I woke up probably from the collar. The collar made a noise. He has a license on it.

Q. When the dog slept in your room that night, where did he sleep?

A. Right on a rug next to the bed.

Q. Right on a rug next to the bed?

A. Yes.

Q. That was the sound that awakened you?

A. Yes.

Q. Was the dog's license tag jingling on his collar?

A. Yes.

[fol. 235] Q. The dog was just moving about?

A. Yes.

Q. He didn't bark?

A. No.

Q. You are sure he didn't bark?

A. No, he didn't.

Q. There was just this jingling noise?

A. Yes, sir.

Mr. Alexander: That has been asked and answered, if the Court please, several times now.

The Court: Objection sustained.

By Mr. Armstrong:

Q. At the time that you heard—when you heard this noise, you got out of bed right after that and took the dog out?

A. Yes.

Q. And, then before you went back to bed again, you brought the dog back in the house with you?

A. Yes.

Q. And took him back to your bed?

A. I wanted him to stay outside, and he wouldn't, but I took him back to the room.

Q. Did you try to keep him outside?

A. Not outside, in the hall.

Q. What did he do?

A. Nothing. He just got up again and went back in the room.

[fol. 236] Q. Went back into your room?

A. Yes.

Q. Is that what you are telling us?

A. Yes.

Q. You mean when you say he wouldn't stay outside, you mean even though you put him outside he got up and walked in your room anyhow?

A. Yes.

Q. When you woke up in the morning, the dog was still in your room when you first woke up, is that right?

A. Yes.

Q. And he was still sleeping on this little rug by the side of your bed?

A. Yes.

Q. When you went into the bedroom where you saw Mrs. McCauley, was Mrs. McCauley lying on what has been indicated as the chaise lounge that was down here (indicating) at the bottom of the bedroom on our diagram?

A. Yes.

Q. She was lying on it?

A. Yes.

Q. Did you notice whether she was lying—was her whole body on the chaise lounge?

A. No, only half.

Q. Were her feet on the chaise lounge?
A. No, the feet were on the floor.

[fol. 237] The Court: Wait until all the questions are asked and it may answer what you have in mind.

By Mr. Armstrong:

Q. You say you saw blood on her feet and her legs, is that right?
A. Yes.
Q. Where on her feet did you see it? Was it on the top of her foot, the sole of her foot, or what?
A. On the back of the feet and on the legs.
Q. When you say on the back of the feet, you mean the sole of the foot?
A. Yes, more or less on the sole. She had some slippers on.
Q. At the time that you saw her, she had slippers on?
A. Yes. I mean, not slippers. Red shoes.
Q. What?
A. Red shoes.
Q. Red shoes on when you first saw her?
A. Yes.
Q. Did she remove these shoes?
A. No.
Q. They were still on her?
A. Sure.
Q. Well, then, where was it that you saw blood on her feet?
A. I saw it on the legs, almost to the shoes.
[fol. 238] Q. How about her feet, did you see any blood on her feet?
A. I think there was a little bit on the sole, not on the sole; do you call it the heel?
Q. Perhaps if you would indicate on my foot what portion of her foot you saw the blood on, just show me on my foot.
A. (Demonstrating on Mr. Armstrong's foot) Here, up here (indicating).
Q. Where was the lowest part of the foot that you saw any blood?
A. Here (indicating).

Mr. Armstrong: The witness is indicating the backmost part of the heel as opposed to the heel—the sole of the foot portion of the heel, and on her legs did you also indicate that you saw blood up on this portion of the leg (indicating)?

The Witness: Yes.

Mr. Armstrong: I am indicating the calf of my leg, up as high as the knee?

The Witness: No, I don't know that.

By Mr. Armstrong:

Q. There was just blood on the back of her leg, or on the front of her leg?

A. On the back of her leg.

Q. Did you see any other blood?

A. No.

[fol. 239] Q. Could you see her face?

A. I couldn't see her face. Her face was buried in her arms.

Q. Could you see her arms?

A. Yes, I saw her arms. There was some blood, too, on the arm and on the ear.

Q. Then you did see blood on her arm and on her ear, is that right?

A. Yes.

Q. Did you see any other blood?

A. No.

Q. Did you notice any other blood on any furniture?

A. No, I told you I didn't go so near. I could see it from where I was standing.

Q. From where you were standing you told us that you saw blood that was on her heel and her leg and her ear and her arm, is that right?

A. Yes.

Q. It is also your further answer that from where you were standing you did not see blood on any furniture, is that right?

A. No.

Q. That's right, you did not see any?

A. I didn't see it.

Q. All right. I wonder if I could have you look at this picture one more time. Does this picture show where you

[fol. 240] were standing, or is that another picture (indicating)?

A. (Examining same.) No.

Mr. Armstrong: Maybe the district attorney would be kind enough to let me use another picture of the room.

Mr. Alexander: Every picture in evidence so far is right here, Counsel.

Mr. Armstrong: Well, your Honor, this room hasn't been available to me. The district attorney has lots of pictures of the room, and I want to use one.

Mr. McCurdy: The district attorney has made one picture available to you, and we intend to use the others and produce them at the proper time, in what we believe to be the correct order.

The Court: You may proceed.

By Mr. Armstrong:

Q. In any event, then, it is your testimony that where you were standing is beyond where——

A. (Interrupting) Beyond where the bed starts.

Q. Beyond where the bed starts in the picture that is marked Defendant's Exhibit A?

A. Yes.

Q. Did you hear the dog moving about at any time after you went to bed and before you heard him moving about at 3:00 o'clock and got up and let him out?

A. No.

Q. To the best of your knowledge, from the time you went to bed until 3:00 o'clock, the dog was all the time there?

[fol. 241] A. Yes.

Q. Now Mrs. Dromtra—is it Miss or Mrs.?

A. Miss.

Q. Miss Dromtra, as you can recall, this room, what you did observe of it when you saw it, when you first went in that morning, directing your attention to this picture, is there anything that appears any different about this room than what you recall last seeing yourself? (Showing same to witness.)

A. (Examining same.) No.

Q. It all appears exactly as you saw it?

A. Yes.

Q. There appears to be something white here on top of bed.

A. I don't know; it might have been a handkerchief.

Q. Do you recall seeing a handkerchief there when you went into the room?

A. There might have been one on the bed, but I didn't pay any attention to it.

Q. The point is, do you recall, when you went in, seeing a handkerchief on the bed?

A. Yes, I think there was one.

Q. Do you recall seeing it?

A. Yes.

Q. In this picture there seems to be a lady's high heeled shoe up there on the dresser in the picture.

[fol. 242] A. Yes.

Q. Do you recall seeing that there when you went in the room?

A. No.

Q. You don't remember that?

A. I don't remember that.

Q. We can't see all of this foot, but this foot here (indicating) appears to be bare; that is, just with a stocking without a shoe.

Is that the way you recall her foot, that she had no shoe on?

A. I think one shoe was off and one shoe was on.

The Court: Keep your voice up.

The Witness: I think one shoe was off and one shoe was on.

By Mr. Armstrong:

Q. One shoe off and one shoe on was your recollection?

A. Yes, that is my recollection.

Q. But you don't remember seeing this shoe there (indicating)?

A. No.

Q. When you first went into this room, do you recall these drawers here (indicating), whether they were open or closed?

A. I don't know. The room was rather in a mess. All the drawers were open and things were sticking out.

[fol. 243] Q. The drawers were open and things were sticking out?

A. Yes.

Q. Well, now, in this picture here (indicating), do these drawers appear to you to be open or closed?

A. No, they are closed, but there is some drawers on this side (indicating).

Q. There are drawers on the other side that aren't shown on the picture?

A. Yes.

Q. You don't remember which drawers were open with things sticking out of them?

A. No.

Q. When you called the Thompsons after you had gone out of the room, do you remember, not what you said—not what they said to you, but what did you say to them, do you recall?

A. No. I just told them to come as soon as possible, there was an accident, because I didn't know what really happened, and I didn't want to scare them too much, either.

Q. You said there was an accident?

A. Yes.

Q. Again, without saying what anybody else said to you, did you tell them to whom you thought the accident had happened?

A. Yes, I mentioned Mrs. McCauley. I couldn't say very [fol. 244] much because the children were around.

Q. Do you recall now—you recall the fact of this conversation, don't you?

A. Yes.

Q. I would like you to remember just as much of what you said, without telling us what anybody said to you. Do you recall saying what led you to believe it was an accident, or did you say anything about that?

A. No, I just said I believe it is an accident and "you better get a doctor, too."

Q. You said, "and you better get a doctor, too"?

A. Yes.

Q. And then assuming that they said something, without saying what it was, do you remember anything else you said after that?

A. No, nothing any more. I hung up.

Q. You just hung up the phone?

A. Yes.

Q. Did you make any further phone calls then?

A. No.

Q. Did you ever call that man back that was waiting on the phone?

A. No. He came up by himself.

Q. When was that?

A. Shortly after.

Q. Do you know that man's name?

A. No, I can't remember. Mrs. Thompson might have [fols. 245-255] the address. It was an older man who used to take care of the house and clean it and wash the windows.

Q. You had met this older man, is that right?

A. No, I have never seen him before, but, I mean, I knew he worked a long time before.

Q. But, anyway, he was the man that did the cleaning around there?

A. Yes.

Q. And you did meet him that morning?

A. I met him that morning.

Q. Would you remember if his name was Dan, if I refreshed your memory a little?

A. I don't know, maybe.

Q. You are not sure, though?

A. No.

Mr. Armstrong: I have nothing further.

[fol. 255] John Harrison Thompson, called as a witness in behalf of the People, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. McCurdy:

Q. Are you related to Norma McCauley?

A. Yes, sir, I am her brother.

Q. Directing your attention to the date of Tuesday, July 5th of this year, did you go to Norma's residence located at 1100 Somera Road sometime that morning?

A. Yes, I did.

Q. Approximately what time in the morning was it when you arrived at that location?

A. Approximately 8:20 a.m. on the morning of July the 5th.

Q. What portion of the house did you gain entry to? [fols. 256-261] A. I came through the main entrance of the house.

Q. Where did you go?

A. I went immediately to my sister's bedroom.

Q. And when you arrived at the bedroom did you go into the bedroom?

A. Yes, I walked into the bedroom and made a visual inspection.

Q. Would you tell us, sir, what you saw at that time?

A. When I walked in the room I saw my sister lying on the chaise lounge and she had her arms crossed in front of her. She was lying face down on the chaise lounge. I immediately knew that she had been murdered because the blood spattered all over the room, and confusion; I could see in the room. So I immediately walked out after looking at her.

Q. Did you notice anything about her neck?

A. Yes, when I saw her lying there I noticed she had something turned around her neck, as if she had been choked to death.

[fols. 262-263] Q. While you were at the home at 1100 Somera Road on the morning of July 5th did you remove anything from the home; from any portion of the house other than the bedroom?

A. Yes, I did, the only thing that I removed from the house was the set of keys that I found in the kitchen on the sink.

Q. That set of keys was for what, if you know, sir?

A. They were a keyring, several keys on it including her car key and house key.

Q. You removed those from the sink?

A. That's right.

[fols. 264-269] Cross-examination.

By Mr. Armstrong:

[fol. 270] Q. Mr. Thompson, I would like to show you a picture that has been marked Defendant's Exhibit A for identification, and ask you if you recognize what this picture portrays?

A. Yes, I do.

Q. And I will ask you if you remember when you came into the room and as you indicated you were standing in this area about the middle, alongside of the bed about the middle portion of the bed, is that right?

A. That's right.

Q. I will ask you if you noticed a purse being on the bed at that time?

A. I don't recall.

Q. And you recognize these drapes as being the drapes that were in your sister's room at that time?

A. Yes, I do.

Q. I will point to this picture, Mr. Thompson, to what appear to be some stains here on the picture, and ask you if you recall having seen these stains before?

A. Yes, I did; I saw them that morning.

Q. And what color were these stains?

A. They were blood stains.

Q. And then I believe you said on direct examination you [fols. 271-272a] had seen some blood that was splattered in the room?

A. On the chaise lounge, I noticed there was blood on the chaise lounge, and especially up on this wall; and I think there was a little splatter over here on this wall, right in here.

Q. On this wall right here?

A. Yes, splatters—right there on the picture.

Q. I see; indicating the portion of the wall directly to the left of the drapes that bear the stains about one inch to one inch and a half down from the top border, the top white border of the picture, approximately in the center of the picture just to the right of the lamp.

The drapes were still drawn when you were in the room?

A. Yes.

Q. Do you recall whether there were any artificial lights on in the room when you went in the room?

A. I don't recall, sir.

Q. But you do recall with drapes in their drawn condition you were able to see the things you told us about in the room at that time?

A. Yes.

[fols. 272b-277] In the Superior Court of the State of California in and for the County of Los Angeles

Santa Monica Dept. B. Hon. Stanley Mosk, Judge

[Title Omitted]

Transcript of Proceedings—November 21 and 22, 1955

[fol. 278] Louis J. Socha, called as a witness on behalf of the People, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you be seated, please, and state your name.

The Witness: Louis J. Socha.

The Clerk: Will you spell the last name?

The Witness: S-o-c-h-a.

The Clerk: Will you spell the first name?

The Witness: L-o-u-i-s.

Direct examination.

By Mr. Alexander:

Q. Mr. Socha, would you keep your voice up, please, so that the jury might hear you?

A. Yes, I will try.

Q. What is your occupation?

A. I am a taxicab driver for the Yellow Cab of Los Angeles.

Q. Were you such a taxicab driver on the 4th day of July, 1955?

A. Yes, I was.

Q. About what time of the day did you come to work that day?

[fol. 279] A. I would say about ten minutes of 5:00.

Q. That is in the afternoon or the morning?

A. The afternoon.

Q. After arriving at work—by the way, is your cab equipped with a two-way radio?

A. Yes, it is.

Q. Sometime after arriving at work, did you receive a call to proceed to a certain destination?

A. Yes, I did.

Q. To what destination were you directed?

A. I was directed to U.C.L.A. Law Building.

Q. That is the University of California at Los Angeles, Law Building, is that correct?

A. Yes.

Q. And where were you when you received that call?

A. Well, I was leaving the garage in Beverly Hills. I had gotten it over my radio. It was my first trip, I believe, and over the radio the dispatcher directed me to go to the Law Building and pick up a passenger there.

Q. Did you then proceed to the University of California at Los Angeles?

A. Yes, I did.

Q. And did you find the Law Building immediately upon arriving at the University?

A. No, not right away. I inquired of a State Patrolman on the grounds, because it was a holiday, and the school [fol. 280] was closed.

Q. And then did you go to the Law Building?

A. Yes.

Q. When you got to the Law Building, did you see someone there?

A. No, nobody there at all.

Q. Was your attention attracted to a man in a little while?

A. Yes, sir, it was.

Q. Where was this man when you first saw him?

A. Well, I was turning my cab around and I was coming out of the Hilgard exit, and he was coming across the lawn, and I asked him, is he the man that called for a cab, and he said yes, he was.

Q. Did the man then proceed to get into your cab?

A. Yes, he did.

Q. And where did you drive to?

A. Well, I took him to Somera Road.

Q. Had anyone directed you to go to Somera Road?

A. Yes, the gentleman—the passenger in my cab directed me where to go on this—I mean, on this trip, to Somera Road, he directed me there.

Q. Did he direct you to any particular house number on Somera Road?

A. No, he didn't give me a number.

Q. What did he say?

[fol. 281] A. Well, he told me that he is going up to Somera Road, and I just paused for a second, and then he said, "If you don't know where it is, I will direct you," and so I just let him direct me there, and I asked him for an address, and he didn't give me an address, so I took a guess, and I just said, "800 Somera Road," over the radio.

Q. That is what you called back over the radio to your dispatcher?

A. Yes, on the two-way communication.

Q. Did you proceed up to Somera Road?

A. Yes, I did.

Q. Now, Somera Road ends in a dead end, does it not?

A. Yes, it does.

Q. Do you know about where that is?

A. How would you say where it is?

Q. The dead end, about what block would it be?

A. It is the 1100 block.

Q. Did you proceed right to the dead end?

A. Yes, I did.

Q. Then what happened?

A. I turned around and I stopped—I came to the end and I turned around, and then I went slowly, and then he directed me—directed me. I wasn't given an address where to stop, so I drove very slowly going up the hill, made the turn around, and then stopped at his direction.

Q. Now, did you stop at a particular house?

[fol. 282] A. Yes, I did.

Q. Can you describe the house?

A. Well, to the best of my recollection, it was a brown house, lanai type.

Q. I show you People's Exhibit 10 and ask you, does this appear to be the house at which you stopped (showing same to witness)?

A. (Examining same) Yes.

[fol. 283] Q. After you stopped there, did your passenger say anything, or do anything?

A. Well, he asked me how much the fare was, and I told him the fare was $1.60, and then he paused for a second and then he paid me $2.00 in single dollar bills, and he laid it on the front seat, and then he got out of the cab and crossed towards this home.

Q. Towards the home shown on People's Exhibit 10, is that right?

A. Yes.

Q. Now, on the way—strike that.

About what time was it that you picked this passenger up at the law building at U.C.L.A.?

A. At 5:15 p.m.

Q. Do you know about how long it took you to go up to this house on Somera Road that you have described?

A. Fifteen minutes.

Q. Then would you say you arrived there at about 5:30, is that correct?

A. Yes, that is correct.

Q. On this trip up to this particular house, did your passenger say anything to you that you remember?

A. Well, he said a few things, but, I mean—he wasn't the kind I would say that was talkative. I tried to get a street address and mentioned a hot day, or something like that, and not too much conversation, a running conversation, just [fol. 284] sporadic. He would say something. I would ask him something, and then he would say something to me, and that was it. He would be quiet.

Q. Do you recall anything else besides this possibly hot day mentioned, said by your passenger?

A. No, I wouldn't, not that I remember.

Q. Was there anything said at all about renting a place?

A. It was mentioned casually, but I didn't think too much of it at the time.

Q. No matter what you thought of it, just what was said about it, and by whom?

A. By Mr. Crooker.

Q. What did he say?

A. That he was going to look for a home for rent.

Q. Now Mr. Socha, will you look around this counsel table, please, and tell us whether you see the man here now whom you picked up at the law building at U.C.L.A. on July 4th, 1955, and dropped at the house that you described on Somera Road?

Do you see him here at the counsel table?

A. Yes, I do.

Q. Will you point him out, please?

A. Should I stand up?

Q. If you will, please.

A. (Standing up) He is at the edge of the table right [fol. 285] there (indicating).

Q. By "the edge of the table", is this the man that you refer to (indicating the defendant Crooker)?

A. Yes, to my left.

Mr. Alexander: May the record indicate the defendant Crooker?

Q. Do you know the distance, or the approximate distance between the law building at U.C.L.A., and the McCauley residence, which you have described here on People's Exhibit 10?

A. I can take a guess. To the best of my knowledge——

Q. (Interrupting) You say the fare was $1.60?

A. Yes.

Q. So about how far would that take you?

A. About three miles.

Q. When you picked the defendant Crooker up, you had some conversation with him as to whether he was the one who called the cab, is that right?

A. I asked him if he was the man that called the cab, yes.

Q. What did he say to that?

A. Yes, he was.

Mr. Alexander: Cross examine.

Mr. Armstrong: May I have the last question and answer, please?

(Reporter reads question and answer.)

[fol. 286] Mr. Armstrong: Back up one question.

(Reporter reads the preceding question and answer.)

Cross-examination.

By Mr. Armstrong:

Q. Mr. Socha, you received this call to go to U.C.L.A. over the radio in your cab, didn't you?

A. Yes.

Q. And at that time the name was given to you as the person you were to pick up?

A. Yes.

Q. And the name that was given you was Mr. John Crooker, wasn't it?

A. Yes.

Q. Will you tell us a little bit more about this conversation about a place to rent? Who started it; as best you can recall, who said what?

A. Well, I would say the passenger said it to me.

Q. Well, did you say something about, "Why are you going up there?"

A. No, I didn't ask anything why he was going there. He mentioned it to me, and that was all. It was just something casual.

Q. Was there anything else said that you remember?

A. No, not that I remember.

Q. Well, Mr. Socha, you recall testifying in this matter [fol. 287] at the preliminary hearing on July 19th?

A. Yes.

Q. I will direct your attention to the preliminary transcript, Page 76, Line 24, to Page 77, Line 1, and ask you to read that to yourself, starting at Line 24.

(Witness read said preliminary transcript, the portion indicated, to himself.)

[fol. 288] Q. As to this conversation, you remember so testifying?

A. Yes.

Q. The question, "Was there any conversation with you and the defendant as you rode along in the cab?

"A. No, I mentioned it was a hot day and that was about all."

Now, as to this conversation about he was renting a place, has that just occurred to you since that time?

A. No, it has not.

Q. Can you tell us why you didn't happen to mention that at the preliminary hearing?

A. Well, as I probably didn't think of it directly at the preliminary, I was not asked pertinent details about a conversation in a sense that I was talking to him from the time I picked him up to the time I dropped him off.

Q. Since the preliminary examination have you discussed your prospective testimony here with anyone?

A. No, I have not.

Q. You have not talked to anybody at all about the fact of what you could or would say at this trial?

A. No, I did not.

Q. You have talked to no police officer about that?

A. No.

[fols. 289-325) Q. You have talked to no member of the District Attorney's Office about that?

A. No.

Q. You are here in response to a subpoena, aren't you?

A. Yes, I am.

Q. When the subpoena was served on you did the person who served the subpoena discuss your testimony in any way?

A. No, he did not.

Mr. Armstrong: No further questions.

[fol. 326] Grover Armstrong, called as a witness by and on behalf of the defendant, after being duly sworn, was examined and testified as follows:

The Clerk: Be seated and state your name, please.
The Witness: Grover Armstrong.
The Clerk: What is your first name?
The Witness: Grover, G-r-o-v-e-r.

Voir dire examination.

By Mr. Armstrong:

Q. Mr. Armstrong, will you state your occupation, please?

A. I am a Lieutenant of Police, in charge of the West Los Angeles Detective Division.

Q. And that was your occupation on or about July 4th and 5th of this year?

[fol. 327] A. Yes, sir.

Q. All right. Directing your attention to July 5th of 1955, did you have occasion to see the defendant, John Crooker, on that occasion?

A. I did, yes.

Q. Where was it that you saw him?

A. I first saw him at his apartment on Marathon Street in Hollywood.

Q. At the time you came into the defendant's apartment, were other police officers there?

A. Yes, Sgt. Gotch, Officer Stambler, Ray Pinker of the Crime Lab., Captain Stillson, in charge of the Crime Lab., and Mr. Alexander. Inspector Kerr was with me.

Q. All right. What time of the day was it, by the way, that you got there, approximately?

A. Approximately 3:30 in the afternoon.

Q. And how soon after your arrival did you first have occasion to speak to the defendant in any manner on any subject?

A. I believe I only identified myself to the defendant at that time.

Q. I see. Then what was the first time that you had occasion to speak to the defendant, more than just the amenities?

A. That would be approximately 8:30 that same day, the fifth, at the Crime Lab.

[fol. 328] Q. Which is located where?

A. 318 West 1st Street, in the old Police Building.

Q. All right. Now, specifically directing your attention, while you were still in the apartment, did the defendant on that occasion say, either to your or to Inspector Kerr, as you came into the room, presented yourself to the defendant, that he wished to get in touch with an attorney?

A. I don't recall that, no, sir.

Q. Then directing your attention to the conversation you had with him at 8:30 at the Crime Lab., approximately how long did that conversation last?

A. Oh, an hour, more or less.

Q. And who was present at that time?

A. Sgt. Gotch, Officer Stambler, and Officer Willis—he was in and out. He is now with the Sheriff's office.

Q. By the way, before we leave this, about what time did you leave the defendant's apartment?

A. About 4:30, I would say.

Q. During the hour, to the best of your recollection, you had no conversation, I believe you said you got there about 3:30?

A. About 3:30, yes.

Q. During the hour you were there, it is your testimony you had no conversation with the defendant other than to identify yourself, is that correct?

A. That is correct, yes.

[fol. 329] Q. During the hour that you were there, were other officers in your presence questioning the defendant?

A. No, sir.

Q. Now, what did you do during that hour?

A. Search of the apartment was conducted at that time. I personally was searching the apartment, myself.

Q. At that time did you have in your possession a search warrant?

A. No, sir.

Q. This investigation was being conducted by you at that time, is that right, or, that is, you were in charge of the operation, is that so?

A. Well, probably Inspector Kerr would be the man in charge. He has the superior rank.

Q. All other officers aside from Inspector Kerr, they were all under your command?

A. The scientific laboratory man, Mr. Pinkerton, and Captain Stillson, are from another division, and would be in charge, actually, of the search.

Q. At the time that this search was going on, where was the defendant?

A. He was seated in a chair in the middle of the room, as I recall. I don't remember seeing him move, other than to go to the bathroom a couple of times.

Q. Was he wearing handcuffs at that time?

A. He might have been, I am not sure of that.

[fol. 330] Q. At that time, to your knowledge, while you were conducting your search, the search was incidental to the arrest, I take it?

A. Yes, sir.

Q. The defendant was at that time under arrest?

A. Yes.

Q. Lt. Armstrong, are you aware or familiar with the provisions of Section 825 of the Penal Code?

Mr. Alexander: Immaterial, if the Court please; objection.

The Court: Objection sustained.

Mr. Armstrong: I'm sorry, I misstated myself.

Q. At the time that you were in the defendant's apartment, you were there on the basis of a felony having been committed, and you were in fresh investigation of the felony, is that right?

A. That's right.

Q. You had no warrant for the defendant's arrest?

A. I had no warrant, no, sir.

Q. Are you familiar with Section 849 of the Penal Code?

Mr. Alexander: Immaterial, if the Court please; objection.

The Court: Objection sustained.

By Mr. Armstrong:

Q. Isn't it customary, Lieutenant, when an arrest is made without a warrant to take the arrested defendant before [fol. 331] the nearest magistrate in the county?

Mr. Alexander: Objected to, if the Court please; immaterial.

The Court: Objection sustained.

By Mr. Armstrong:

Q. You spent approximately an hour conducting a search of the apartment, is that right?

A. Approximately, yes, sir.

Q. You say you were doing this personally?

A. I was assisting.

Q. I mean, you were taking part in this search?

A. I was, yes.

Q. Other officers were doing the same thing?

A. Yes.

Q. When you finished with this search and you went down to the Crime Laboratory, how long were you there—pardon me just a moment, let's back track for a moment.

This was from 3:30 to 4:30. What happened at 4:30, where did you go?

A. Inspector Kerr and myself left the premises on Marathon and went to the Crime Laboratory, 318 West 1st Street, in down town Los Angeles.

Q. You arrived there probably about 5:00 o'clock?

A. Approximately 5:00 o'clock.

Q. Then you did not see the defendant again until about 8:30, is that correct?

[fol. 332] A. No, I saw him—I saw him before 8:30.

Q. When did you next see him?

A. I saw him shortly after we arrived.

Q. And what time was that, approximately?

A. Around 5:00 or 5:15, maybe.

Q. Where was he placed after he arrived down there?

A. He was taken upstairs, the second or third floor.

Q. Where?

A. The second or third floor of the old police building where the Crime Lab. is located.

Q. And did you go up there, too, Lieutenant?

A. I did, yes, sir.

Q. Now, while he was up there, what was happening?

A. Well, photographs were taken.

Q. Were you present at that time?

A. I was in and out; I saw some of the preparation; I saw the defendant.

Q. Was the defendant being questioned by anyone at that time that you observed?

A. No, sir.

Q. I'm sorry, my question is compound; was he being questioned by anyone, to your knowledge?

A. Not that I saw, no, sir.

Q. Not that you saw. The next time, or really the first time you had occasion to have any discussion or conversation with the defendant beyond merely identifying yourself, [fols. 333-337] was about 8:30 at that building is that right?

A. About 8:30, yes, sir.

Q. How long did you talk with him on that occasion?

A. Sgt. Gotch, Stambler, and myself talked to him maybe an hour or a little less.

Q. From 8:30 to about 9:30, is that right?

A. About right, yes, sir.

Q. What was the general subject of your questions at that time, what were you asking?

A. I personally explained the workings of the polyograph machine, the lie detector machine.

[fol. 338] Q. Lieutenant, at the time that this conversation was had from 8:30 until approximately 9:30, you, yourself, addressed the questions to the defendant?

A. I did, yes.

Q. Would you just tell us the general subject matter of the conversation that you were having at that time, that you were personally having with the defendant at that time?

A. I asked him his position in the McCauley home. He said that he had been a house boy there. I asked him questions as to how he was paid. He said there was not any set amount of payment; the money went toward his education. I asked him if he knew of anyone else who could be a suspect in this case. He said he didn't think he could help us on that.

I asked him if he were in love with Norma McCauley; and he said that he was. I asked him how long he had remained in the McCauley employ after the separation, and he said a short time, and that after that, he had gone to work for the Thompsons, the father.

[fol. 339] I think in general that is the subject matter that was covered and the answers, counsellor.

Q. All right. Now, you started to say a moment ago that you had asked the defendant to submit to this polygraph test.

A. I had, yes, sir.

Q. Now, at the time of that conversation, Lt. Armstrong, did the defendant at that time say anything about wanting to confer with an attorney?

A. Not that I recall, Mr. Armstrong.

Q. May I refresh your recollection, Lt. Armstrong, by asking you if it wasn't a fact that the defendant refused to take the examination and explained his refusal to you, that he wished to see an attorney before submitting to such a test?

Does that help you to recall?

A. I don't recall any request for an attorney, counsellor.

Q. All right. Now, were there other officers present in this conversation from 8:30 until 9:30?

A. Sgt. Gotch and Officer Stambler and Mr. Willis were present.

Q. During a portion of this period of time, Lt. Armstrong, you were out of the room, were you not?

A. Yes.

Q. This 8:30 to 9:30 period?

[fol. 340] A. Yes.

Q. Is the principal time that you were in the room the time that you have just told us about when you, yourself, were asking questions?

A. That's right, those are the questions I recall.

Q. And as far as the other officers are concerned, were you out of the room most of the time they were asking—Strike that.

Were you in the room when any of the other officers were asking questions of the defendant, that you recall?

A. I was in the room when Officer Willis was explaining the lie detector procedures to the defendant.

Q. And at the the time that Officer Willis was explaining lie detector procedures to the defendant, do you recall that at that time the defendant said to Officer Willis, in your presence, that he did not wish to take the test until he had had an opportunity to consult with an attorney?

A. I don't recall that. He may have said that, but I don't recall that, Mr. Armstrong.

Q. All right. We have come up to 9:30. At 9:30, what happened then?

A. I returned to the West Los Angeles Detective Division.

Q. When is the next time, in point of time, that you saw [fol. 341] the defendant?

A. Somewhere around 11:00 o'clock. I saw him before that, but I didn't talk to him before that.

Q. Where did you see him before that, approximately what time?

A. Oh, I saw him on his arrival——

Q. It was about what time?

A. Oh, 9:45, maybe.

Q. At West Los Angeles?

A. At West Los Angeles, yes.

Q. All right. The next time you had occasion to talk to him was some hour and fifteen minutes later?

A. Yes, that's right.

Q. And how long did that conversation last?

A. Well, it was interrupted, Mr. Armstrong.

Q. Well, approximately how long were you, let's say, continually in the room with the defendant?

A. Approximately 12:15 or so.

Q. All right, then. During that period of time from 11:00 o'clock until 12:15, did you have occasion to question the defendant yourself?

A. I did, yes.

Q. And who else was present at that time? Who else did you observe in the room from 11:00 to 12:15 as you were coming in and out of wherever you were?

A. Inspector Kerr, Sgt. Gotch, Sgt. Hooper, and Gra-
[fol. 342] vante, Officer Gravante.

Q. And as to Inspector Kerr, did he remain in the room with the defendant most of the time from 11:00 to 12:15?

A. Well, we were in and out. There were coffee breaks, and from time to time somebody would go down and get a pot of coffee. I couldn't say.

Q. Most of the time he was there?

A. I would say most of the time, yes.

Q. How about Sgt. Gotch, most of the time from 11:00 to 12:15 he was there?

A. Probably so, yes.

Q. And Sgt. Hooper, how about him? Was he there most of the time from 11:00 to 12:15?

A. Most of the time.

Q. And Officer Gravante, was he there most of the time from 11:00 to 12:15?

A. I believe so, yes.

Q. Were there any other officers there that you recall? How about Officer Stambler? Was he there?

A. No, he wasn't in the room, I don't believe. If he did, he came in and out.

Q. I see. All right. Can you tell me who was doing the principal amount of questioning from 11:00 to 12:15?

A. Well, it was probably myself.

[fol. 343] Q. All right. And next to you who was asking the most questions that you recall? I know you didn't count them, but who seemed to be assisting you the most at that time?

A. That is hard to say. We were all engaged in the interrogation. I started the interrogation off, Mr. Armstrong. My questions were interposed by the different men in the room.

Q. I see, but you were primarily carrying the thread of the conversation, is that right?

A. I was carrying the conversation, yes, sir.

Q. And Sgt. Hooper would occasionally ask a question, just interpose one, is that right?

A. That's right.

Q. And was the same true of Gravante?

A. And Gotch.

Q. It is true of Gravante?

A. Yes.

Q. And Gotch, and also the inspector. Did he participate in it any?

A. The inspector was more of an observer on this interrogation.

Q. Just generally in this approximately hour and fifteen minutes that you have identified for us, Lieutenant, what were the general trends of the questions at this time?

[fol. 344] A. I started the questioning by asking the dedenfant if he would describe his actions on July 4th, with particular attention to abrasions he had on his fingers and the scratch on his neck and chin.

Q. All right.

A. He stated that he had been for a ride to the beach and that his car had become involved with another car in an auto traffic accident by a bumper hookup. That in releasing the two cars he had injured his fingers. He stated the abrasion on his neck or chin here (indicating) was caused by shaving. I asked him what route he had——

Q. (Interrupting) Pardon me a moment. On that particular point, when you asked him about this abrasion on his neck or chin, when you first asked him about it, was the defendant unaware of this, or did he express unawareness to you that he had any mark on his neck or chin?

A. I couldn't say that. I don't know. He put—I know he put his hand up to his face. I remember his statement saying he was shaving.

Q. Go ahead, then. I am sorry.

A. Well, I asked him how he had gone to the beach. I asked him if he had been on Santa Monica Boulevard and he said he preferred not to answer.

I asked him if he had gone down Sunset Boulevard to the beach and he stated he preferred not to answer.

[fol. 345] Q. Pardon me again for a minute. At that point when he was telling you that he preferred not to answer, did he say anything at that time that he preferred not to answer until he discussed the matter, the subject under consideration, with an attorney?

A. No, sir.

Q. All right.

A. I asked him if he had been on Somera Road, and he said no. I asked him why he had said that he didn't prefer to answer when I questioned him about Santa Monica Boulevard and Sunset Boulevard, and said no to Somera Road, and he said, "I don't care to answer."

I went over other material that he had covered in the previous interview with the Crime Lab. I asked him repeated questions on his association in the home, in the McCauley home.

I asked him if he could give us a definite answer to how he was paid and how much. I asked him if there had been jealousy on the part of Mr. McCauley, referring to Mrs. McCauley, and he said not that he knew of. He said he was well accepted in the home, and that the children loved him.

I can't think of anything else, Mr. Armstrong, that is relevant.

Q. During this period from 11:15 to 12:15 in the morning, did you ask the defendant if he killed Mrs. McCauley?

[fol. 346] A. From 11:15 to—What was that again?

Q. You have identified this period of time that these questions were going on——

A. (Interrupting) This is in the evening.

Q. That's right, 11:00 o'clock in the evening until 12:15 in the morning.

A. That's right.

Q. After midnight?

A. Yes.

Q. During this period, did you ask him if he killed Mrs. McCauley?

A. I remember the question.

Q. Do you remember his reply?

A. He said, "No."

Q. Was he asked by you or by anyone in your presence if he had stabbed Mrs. McCauley?

A. Yes.

Q. And his reply?

A. The question was asked, and he said, "No."

Q. Did anybody ask him if he strangled Mrs. McCauley?

A. I don't recall that.

Q. Did anybody ask him at that time if he knew where the knife was that killed Mrs. McCauley?

A. I don't recall that question, no, sir.

[fol. 347] Q. Did anybody ask him at that time if he had a knife of his own?

A. Yes, I believe that question was asked, yes.

Q. Do you know who asked that question, by the way?

A. I can't recall, Mr. Armstrong, who asked that question.

Q. In any event, do you remember his reply?

A. Vaguely I remember him saying that he had a pocket knife.

Q. Do you remember the subject coming up, or the answer to that question being that the defendant had had a couple of Navy knives that he had used in his work, but he hadn't seen them for some time?

Just, do you remember that answer on the part of the defendant to that subject of inquiry?

A. It is possible. I don't distinctly recall that, Mr. Armstrong.

Q. Did anybody ask him at that time if he knew where Mrs. Cauley's car keys were?

A. I don't recall that, no.

Q. Did anybody ask him during this period of questioning if he had been in Mrs. McCauley's home between the hours of midnight and 4:00 a.m. on the 5th of July?

A. Yes.

Q. Who asked him that, do you know?

[fol. 348] A. I don't know.

Q. And his reply was what?

A. That he wasn't.

Q. Did anybody ask him when the last time was that he was in Norma McCauley's home, that is, inside the structure?

A. I don't recall that question, Mr. Armstrong.

Q. At any time during this particular period of questioning, do you recall the defendant stating, either in answer to a question, or just make an assertion, that he would like to use the telephone to call an attorney?

A. We discussed that in the hall. My best recollection is that the first time I heard that was in Mr. Roll's office.

Q. That would be the next day?

A. That's right.

Q. That is your best recollection, but are you able to say definitely that he did not ask for an attorney in your presence, that is, before that time?

A. All I can say is that I didn't hear it.

Q. All right. Then, this conservation, you say, ended at about 12:15?

A. About 12:15, yes, sir.

Q. Then what happened next, as far as you personally are concerned? Where did you go then?

A. Sgt. Gotch took the defendant downstairs to book him.

[fol. 349] Q. And you stayed upstairs?

A. Yes, sir.

Q. When did you next see the defendant?

A. Around 1:00 o'clock.

Q. All right, and that was where?

A. In my office.

Q. Which is located where?

A. At the West Los Angeles Detective Bureau.

Q. Is that upstairs?

A. That is upstairs.

Q. All right, and who was present on that occasion?

A. Sgt. Gotch, Sgt. Hooper, Inspector Kerr, Officer Gravante, the defendant and myself.

Q. Did you see where Mr. Gravante was, by the way, from the time that you concluded your previous period of questioning until the time that you again saw the defendant in your office?

Was he with you?

A. I couldn't say. We circulated around the offices.

Q. At 1:00 o'clock, in your office, were questions asked of the defendant at that time?

A. Yes.

Q. And who was the principal questioner in that conversation?

[fol. 350] A. I think we all asked questions.

Q. What was the general line of inquiry at that time?

A. At that time a doctor entered the room.

Q. This doctor was who?

A. I can't recall his name. He is a police physician. He was called to examine the wounds on his fingers and his face.

Q. You can't help me with this man's name, Lieutenant?

A. I have heard it, but I can't remember it.

Q. The man is familiar to you, though?

A. I have seen him once, and that was the time I saw him.

Q. And if you knew his name—are you able to ascertain his name from your records, from any notes you might have?

Mr. Alexander: I might suggest, we will get that name for you, counsel.

Mr. Armstrong: Thank you very much.

Q. All right. This doctor's examination consumed about how much time?

A. Ten, fifteen minutes, maybe.

Q. And you were all present at this time?

A. Yes.

Q. Then after the doctor left, what was the general line [fol. 351] of questioning from that point on?

A. First the questions were again concerning the wounds on his hands. We went over that material again. His story was consistently the same. In fact, I believe that is about all I recall hearing during that interview.

Q. How long did this interview last, the one that started at 1:00 o'clock?

A. I left the room maybe a half-hour, forty minutes later, to go down to get some more coffee, and I believe Hooper, Gotch, Kerr and myself left.

Q. That would be at about 1:30 then?

A. 1:30, maybe a quarter of 2:00.

Q. All right, when did you next see the defendant?

A. Around 3:00 o'clock.

Q. Are you sure that at that time that you went down to get coffee that Sgt. Gotch went with you?

A. He left the room with us. I believe Inspector Kerr and myself went downstairs alone.

Q. How about Hooper? Are you sure he left the room with you, too?

A. He and, Gotch—if I recall correctly, Inspector Kerr, Hooper and myself left one door, and Gotch left another door to go back to the Homicide Office.

Mr. Armstrong: All right. I have nothing further of this witness at this time.

[fol. 352] *Mr. Armstrong: All right. I have nothing further of the witness at the time.*

Cross-examination.

By Mr. Alexander:

Q. Now Lt. Armstrong, in answer to a question put to you by counsel concerning whether or not the defendant had stated he wanted to see an attorney, you made the statement, "We discussed that in the hall." What did you mean by that?

A. Well, Mr. Armstrong asked me when Court convened this afternoon if I had any independent knowledge of this defendant asking for an attorney.

Q. Is that what you meant when you said, "We discussed that in the hall", in a discussion between you and Mr. Armstrong?

A. Yes.

Q. And not any discussion between you and this defendant?

A. No, Mr. Armstrong, the defense counsel, and myself.

Q. At 8:30 isn't it a fact that the defendant was given something to eat?

A. Yes, sir, he was.

Q. Isn't it a fact that Gotch got him a carton of milk and a sandwich?

A. That is true.

Q. Now, you said that Officer Willis explained to him the [fol. 353] workings of the polygraph. What did Willis say to him?

A. In general, his conversation with the defendant was explaining how the workings of the machine would indicate to the investigators that a defendant would not be a subject for—a suspect in the crime. He explained that we liked the suspect to take the polygraph because it eliminated the possibility of him being involved. In general, that was his questioning.

Q. During the time that you had these coffee breaks, did the defendant Crooker ask for coffee?

A. Yes.

Q. When he asked for coffee, was he given coffee?
A. He was, yes, sir.
Q. Did he ask for anything else, or drink?
A. No, sir.

Mr. Alexander: Nothing further.

Mr. Armstrong: Nothing further at this time. May this witness also be instructed, your Honor?

The Court: Yes. I will instruct you not to discuss any matters about which you have been testifying with any other witnesses outside.

Mr. Alexander: Your Honor, may these witnesses go back to duty, with the understanding that if counsel or we want them again, we can call them, unless you insist that they stay here?

[fol. 354] Mr. Armstrong: I believe this is the first witness to which that would apply. Officer Gravante hasn't finished his direct examination.

Mr. Alexander: That is correct.

Mr. Armstrong. As far as Lt. Armstrong is concerned, he has assured us that he will be on call, and he certainly can be excused to return to his work.

The Court: Very well, you may return to your office. We will take the afternoon recess at this time.

Do not discuss the case among yourselves, or talk to anyone about it, or form or express any opinions on it until the matter is finally submitted to you. We will take a 10 minute recess.

(Recess.)

The Court: The jury is present. You may call your next witness.

Mr. Armstrong: The defense will call Officer Gotch.

JACK GOTCH, called as a witness by the defendant, having been duly sworn, further testifies as follows:

The Clerk: Be seated and state your name again, please, for the record.

The Witness: Jack Gotch.

[fol. 355] Voir dire examination.

By Mr. Armstrong:

Q. I believe you have already testified that you were one of the investigating officers in this case?

A. I am.

Q. And you are attached to the detective bureau of the West Los Angeles Division, at the West Los Angeles Police Department?

A. I am.

Q. Now directing your attention to July 5th, 1955, did you see the defendant on that day?

A. I did.

Q. And where was the first place that you saw the defendant?

A. At his apartment.

Q. And that is located——

A. At 5128 Marathon, Apartment 105, I believe.

Q. All right. At the time you arrived there, was there any other officer in the apartment?

A. There were.

Q. And approximately what time did you arrive at the apartment?

A. I arrived sometime between 2:00 and 2:30, I believe.

The Court: That was in the afternoon?

The Witness: Yes, sir, on July 5th.

[fol. 356] By Mr. Armstrong:

Q. When you arrived, who was already there?

A. Let's see. Two men were assigned from the Hollywood Detective Bureau. Their names are Kruger and Jackson. I don't know their first names.

Q. Kruger and Jackson?

A. Yes, sir.

Q. Were they uniformed officers?

A. No, sir, Detective Bureau.

Q. When you came into the room, where was the defendant?

A. Seated in the chair.

Q. And at the time you came in, was the defendant handcuffed?

A. He was.

Q. Then what did you first do from 2:00 or 2:30—between 2:00 and 2:30 when you arrived? What did you do from that point? What did you first do when you came in the room?

A. Well, the first thing we did was to relieve the Hollywood detectives, and I know they took their handcuffs off the defendant and we put a set of ours on him. We then awaited the arrival of Ray Pinker and Captain Stillson from the Crime Lab.

Q. Pardon me a moment. You said, "we". Who is "we"?

A. Stambler was with me.

[fol. 357] Q. Stambler was with you?

A. Yes, sir.

Q. All right. Then I take it that the men from the Hollywood detectives left shortly after your arrival, is that right?

A. Yes, sir.

Q. Then what did you next do?

A. I told the defendant we were going to search his apartment. He stated we would have to have a search warrant to do that.

Q. And what did you tell him?

A. I told the defendant that he was under arrest on suspicion of murder, and that it was a lawful arrest and we had a perfect right to search; however, I would call my commander and ascertain whether a search would be proper in this case.

Q. Without telling us what the conversation was, did you make a telephone call at that time?

A. I did.

Q. After the telephone call was completed, you commenced the search, is that right?

A. After I got a response to my call.

Q. That is what I mean. After you had completed your telephone call?

A. I called and made a request, waited, and he called me back and gave me an answer to my question.

[fol. 358] Q. Then you commenced your search?

A. That is correct.

Q. Did you make more than one call, yourself, or did you just make one?

A. I believe I made one call in the apartment, in Mr. Crooker's apartment.

Q. From the telephone that was located there in the apartment?

A. Yes, sir.

Q. All right, and then at the time that you arrived, the defendant at that time was under arrest, is that right?

A. That is correct.

Q. And then you placed him under your personal arrest, as you relieved the Hollywood officers, is that correct?

A. Yes. I had called the Hollywood officers to go to that location and place the subject under arrest, if he were there.

Q. What time did you call the Hollywood officers?

A. I don't know. It must have been between—I wasn't keeping close track of the time. I imagine it was between 11:30 and 1:00 o'clock, 12:00 and 1:00 o'clock.

Q. All right. Now, we have gotten to the place where you had made your telephone call and received a telephone call in response, and now you commenced the search of the apartment, is that right?

[fol. 359] A. Yes, sir.

Q. And this was you and Officer Stambler that were doing this?

A. No, Pinker and Stillson had arrived.

Q. Pinker and Stillson had arrived?

A. Yes.

Q. The four of you were doing this?

A. Well, I suppose you would say the four of us were doing it.

Q. Who was with the defendant?

A. It is a small apartment. I imagine all four of us were with him.

Q. I mean, it wasn't—what I meant to say was, was anyone sitting next to the defendant rather than being engaged in the search?

A. No. The defendant was sitting in a chair by himself. There was no other seat near him.

Q. Were you having a conversation with the defendant at this time?

A. No, sir.

Q. Was there anybody else to your hearing?

A. No, sir.

Q. Did the defendant say anything to you at this time about wanting to call an attorney?

A. No, sir, not at that time.

Q. What is the first time that the defendant said any- [fol. 360] thing to you about wanting to call an attorney?

A. I believe the first time, to the best of my recollection, was after we had given him the sandwich and the bottle of milk and had given him time to consume that, and smoke a cigarette. He was in the polygraph room at the Central Station, and I believe I was with him alone. I am not sure when he did make a request for an attorney.

Q. When he made the request for an attorney, what did you tell him?

A. I asked him who did he want for an attorney.

Q. And he said what?

A. He stated he didn't know.

Q. What else did he say on this subject?

A. I stated to him that after our investigation was concluded he could call an attorney, and if he didn't have funds to hire an attorney, when he went to Court a public defender would be assigned to handle his case.

He then stated that he had a friend who had been an instructor at Pepperdine College that would probably handle the case for him. I asked him who the name was, and he said it was a man by the name of Simpson, who lived in Long Beach.

Q. He asked you if he could call an attorney at that time, and you told him that he could call after your investigation was completed, is that right?

A. I told him, after I was through with the investigation, [fol. 361] he could make a call.

Q. All right. We have gotten a little ahead of ourselves. This, you say, was up in the Crime Lab. of the Los Angeles Police Department?

A. That is correct.

Q. In the vicinity of what is known as the Central Station?

A. 318 West First Street. That is the old Central Station that is normally occupied by the police.

Q. As far as the apartment was concerned, what time did you leave the apartment?

A. I believe I left the apartment sometime between—oh, 4:00, 4:30, between 4:00 and 4:30, I would say.

Q. All right. Did the defendant leave with you at that time?

A. He did.

Q. And you went by automobile?

A. Yes, sir.

Q. To Central Station?

A. Yes, sir.

Q. You went directly there?

A. Yes, sir.

Q. Without stopping in between?

A. No, sir.

Q. How long were you with the defendant at Central Station before you again questioned him?

[fol. 362] A. We arrived—when we arrived at Central Station, we went to the third floor where the photographic section is, and also the polygraph section. We sat the defendant down——

Q. (Interrupting) Pardon me a moment. Let's establish who was present. You say "we went to the third floor."

A. I know Stambler was with me. There were other officers present, but I don't know their names. There was also a number of newspaper men along at all times.

Q. Were these newspaper men allowed to photograph the defendant?

A. What do you mean, allowed to?

Q. Well, at that time, did the press make pictures of the defendant?

A. I think they did. There was no way we could stop them.

Q. Were you inside the police station at this time?

A. We were up in the Crime Lab.

Q. I see. Then you and Stambler were there, and did you have a conversation with him at this time, with the defendant?

A. No.

Q. When was the next time that you had a conversation with the defendant?

A. Around 8:30.

[fol. 363] Q. Did you go out sometime in the interim to get some dinner?

A. Yes, sir.

Q. What time was that?

A. Well, I believe we arrived at the station about 5:30, a quarter after five. We made arrangements to photograph the defendant, which we did, which took quite a bit of time. We then had a conference with Mr. Willis, who was a polygraph operator, not in the defendant's presence, which took up some more time, to acquaint him with the details of the case.

When we left, we left Mr. Crooker with Officer Willis, the polygraph operator, and Stambler and I left the building and went down the street and had some dinner.

Q. So that would be approximately what time, as best you can judge?

A. I have no idea. It would be sometime after 5:15 and——

Q. Before 6:00?

A. I would say around 6:00, 6:15.

Q. Then you brought back a sandwich for the defendant, is that right?

A. A sandwich and a glass of milk. That is what he had stated he preferred, milk.

Q. What kind of a sandwich did you bring back?

A. A hamburger.

[fol. 364] Q. When was this given to the defendant?

A. Around 8:30.

Q. What time was it when you bought it?

A. We ate dinner around 6:00. I imagine it took us a good—I know we wasted about an hour or an hour and a half down in the restaurant, and then we ordered it for when we left, so that would have made it, I imagine, around 7:30 is when I picked it up, or a quarter after 7:00.

Q. Did you give him this sandwich before or after you questioned him in the vicinity of the polygraph room?

A. I didn't question him until 8:30, and I gave him the sandwich then.

Q. Then this questioning at 8:30, that took about how long, from 8:30 until approximately when?

A. If I recall correctly, we started at 8:30 and before we started we gave him the sandwich and the bottle of milk.

At that time we left him seated in the polygraph room, and I don't believe anybody was with him while he was eating, so it took him ten, fifteen minutes to eat, and then we questioned him, say, from 8:45—8.30 or 8:45 until approximately 9:30, 9:45.

I imagine it consumed about an hour.

Q. All right. This questioning that took place from 8:30 to 9:45, what was asked of the defendant? What was the general line of that questioning?

A. Well, the general line of that questioning was to try [fol. 365] to convince him to take the lie detector.

Q. At that time was that when he said that he didn't want—did he say at that time that he didn't want to take the lie detector test until he had had an opportunity to consult with an attorney?

A. No.

Q. All right. Who was present in that questioning that took place from 8:30 to 9:30, 8:30 to 9:45?

A. Well, after we—we let him eat, and I believe I went in first by myself. When he was through, then Lt. Armstrong and Stambler came into the room. Now, Officer Willis might have been present some of the time. I don't really recall.

[fol. 366] Q. And Lt. Armstrong, was he there constantly, or was he in and out during this period from 8:30 to 9:45?

A. I think he was in and out.

Q. All right. Then, was Officer Stambler there all the time during that period with you, or was he in and out?

A. I think we were all in and out.

Q. Were you present part of the time when Officer Stambler was questioning the defendant in this period of time you just told us about, between 8:30 and 9:45?

A. I imagine so.

Q. You heard Officer Stambler addressing questions to the defendant?

A. I heard him address some questions to him.

Q. Do you recall hearing Officer Stambler use profanity toward the defendant?

A. Use profanity?

Q. Yes.

A. No, I don't recall that. He might have. It is possible.

Q. Do you recall if you addressed any profane language toward the defendant yourself?

A. If I did?

Q. Yes.

A. I don't recall. I might have.

Q. As to Officer Stambler, Officer Gotch, do you recall [fol. 367] his addressing obscene language to the defendant? By obscene, I mean the usual words that are——

A. (Interrupting) I know what you mean. No.

Q. That are obscene, rather than profane?

A. No.

Q. Do you remember cautioning Stambler against using offensive language to the defendant?

A. No, I wouldn't caution anybody.

Q. This conversation last from about 8:30 until 9:45, I believe you said?

A. 8:30 to 9:30. I figured actually about an hour, if an hour.

Q. From there, where did you go?

A. Then we went directly to West Los Angeles Police Station.

Q. All right. You went directly there without any stops?

A. Yes, sir.

Q. You arrived at the West Los Angeles Police Station probably about fifteen minutes after you left Central?

A. No, sir, it takes a little longer than that.

Q. Approximately how long? I am sorry.

A. About 30 minutes.

Q. When you got to the West Los Angeles Police Station, then where did you go when you first got there?

[fol. 368] A. When we arrived there, we were detained going in. There were a number of newspapermen there again. We went upstairs and we went right directly to the Detective Bureau.

Q. And you were with the defendant then, or he was with you at all times?

A. Yes, that is correct.

Q. He was handcuffed to you?

A. No, he was handcuffed alone. Both of his hands were handcuffed.

Q. His hands were handcuffed behind or in front of him?

A. In front of him.

Q. You took him upstairs in the Detective Section of West Los Angeles?

A. Yes, sir.

Q. Then did you start questioning him there?

A. No.

Q. What happened next as far as you personally are concerned?

A. We sat him down in the room where our desk—the homicide desk is, and Stambler and I went out, then I had a conference with Lt. Armstrong as to what had occurred on the ride out, and so forth.

Q. Did Stambler stay with the defendant during the time that you were having the conversation with Lt. Armstrong?

[fol. 369] A. No.

Q. Do you know who was with the defendant at that time?

A. Well, our offices are very small, and it isn't nec to have somebody right next to a prisoner up in the

Q. All right. What time was it when you next joine defendant?

A. Where are we up to now?

Q. You said you had a conference with Lt. Armstrong after you arrived at West Los Angeles.

A. I imagine that it was sometime around 11:00 o'clock.

Q. Then there was a questioning period that went on there from 11:00 o'clock until when?

A. Well, there was a questioning period that went on from 11:00 to, say, about 12:00.

Q. And who was present there?

A. There was myself, Lt. Armstrong, Inspector Kerr, Sgt. Hooper, Frank Gravante. I believe that [illegible]all.

Q. Coming back for a moment, Sgt. Gotch, when you were at the Central Station, did you ask the defendant questions as to whether or not he killed Norma McCauley while you were at Central?

A. I asked him a number of questions there.

[fol. 370] Q. Did you ask him that particular question, if he killed Norma McCauley?

A. I did.

Q. Did you ask him if he strangled Norma McCauley?

A. I asked him if he killed her.

Q. And he replied what?

A. He said no.

Q. And then did you ask him, also, in addition to asking him the broad question, did he kill her, did you ask him, did he strangle her?

A. No, I believe I just asked him if he killed her, murdered her.

Q. You say you asked him a number of questions. Did you ask him if he stabbed her?

A. I don't believe I did.

Q. Did you ask him the whereabouts of the knife that was used to stab her?

A. No, I didn't.

Q. Did you ask him any questions along the lines, was he extorting money from Mrs. McCauley?

A. Yes, I did.

Q. And he replied what?

A. I asked him in particular about the amount of $300 which had been obtained by him sometime in July from Norma McCauley.

Q. What did he say about that?

[fol. 371] A. He denied any knowledge of it. He stated, however, that from time to time he would receive money to help him in his schooling.

I asked him again about this particular time, and he again denied ever getting the amount of $300 from her at one time.

Q. Then, after these questions had been asked about the $300, do you recall saying to the defendant, words to this effect, "This is what I think happened. I think you were shaking her down, and that you later stabbed and strangled her."

A. I told him I thought he was extorting money from her, but I didn't say anything about his stabbing and strangling her.

Q. Did you say that he extorted money from her and that he killed her?

A. That is what I told him.

Q. Now, Sergeant, in addition to this time that you have mentioned that you had this conversation about the defendant's wanting an attorney, did he renew this request before you left Central Police Station?

A. I never heard him make that request again.

Q. You didn't hear him say any more about it?

A. No, sir.

Q. When you were back at the West Los Angeles Station, were you present while Sgt. Hooper was questioning the [fol. 372] defendant?

A. Yes.

Q. Did you see Sgt. Hooper at any time strike the defendant?

A. No.

Q. Specifically, did you see him—perhaps you wouldn't call it a striking—but make a gesture or slap the defendant in the stomach with the back of his hand?

A. No, sir, he was never struck in my presence or threatened in my presence.

Q. I beg your pardon. What was the last?

A. He was never struck or threatened in my presence.

Q. Now, you said that you questioned the defendant from about 11:00 until a little after 12:00, is that right?

A. Until about 12:00.

Q. Until about 12:00, then what did you do at 12:00?

A. Well, I took him downstairs and booked him at that time.

Q. All right. How long did that take?

A. Oh, it took—it could take anywhere from 30 to 45 minutes, 20 to 45 minutes. I don't know how long it did take. [fol. 373] Q. You don't specifically recall how long it took?

A. No, I don't recall whether there were any other bookings taking place at the same time and whether we had to wait. I believe we went right in and booked him.

Q. After you finished booking him, you took him upstairs again?

A. Yes.

Q. This booking procedure consists of photographing, fingerprinting, and generally securing information from the defendant, does it not?

A. That is the general procedure. That isn't the procedure we used.

Q. While you were booking the defendant during this period of 20 to 45 minutes, did you have a conversation with him at that time, other than the questions that you needed for your booking report?

A. No.

Q. You didn't inquire any more as to the facts of this case while you were booking him?

A. No. There were a number of newspaper people around at the time, and I didn't do anything more than book the man.

Q. When you finished booking him, you took him where?

A. Back upstairs.

Q. And that was in Lt. Armstrong's office?

[fol. 374] A. I believe we went back into the Captain's office.

Q. Then the questioning resumed up there?

A. No. During the booking—he had had some injuries to his hand, to his neck. It is necessary, when booking a man with any superficial cuts or anything like that, to have an m.t. on him, a medical treatment slip, so I had told the man acting as jailer to call the police doctor to examine the man.

Q. And the police doctor that was called, did you see him come in?

A. I don't believe I saw him come in.

Q. You saw him——

A. I saw him there.

Q. That was Dr. William I. Dean?

A. That is correct.

Q. All right. So, you were present, then, while Dr. Dean was examining the defendant?

A. No, I don't think I was. I might have been there part of the time.

Q. Then, when were you next with the defendant, when you were continuously with him?

A. Oh, as far as being with the defendant continuously, I don't think any of us was with the defendant continuously. I mean, we would have other things to do and other calls to make, and maybe I would be with him ten, fifteen minutes, [fol. 375] and then I would leave for possibly five minutes, and then return to the room.

I don't know how to answer that as to continuous time.

Q. Well, were you relieving each other in this?

A. No.

Q. Did one man take over the questions and another man resume from there?

A. No.

Q. It was just a continual questioning process, but all of you weren't present all the time, is that correct?

A. Well, I guess you might put it that way.

Q. When was the next period of time? You said at about 12:00 o'clock you booked the defendant, and that took several minutes, 20 to 40, and the doctor examined him for a few minutes, and when was the next time you yourself had an occasion to address questions to him?

A. If I recall correctly—I can straighten that out. I believe we booked him at 12:20. I believe the doctor came around 1:00 o'clock, and that must have taken ten minutes for the doctor, so then we were questioning him again sometime shortly after 1:00 a.m.

Q. All right. What was the general line of questions at that time?

A. Well, we continued asking the defendant how he had [fol. 376] gotten the injuries on his hands, and asked him general questions concerning his relationship with Norma McCauley.

Q. At that time, you asked him if he killed Norma McCauley?

A. He did.

Q. And at that time did you make inquiry regarding a knife?

A. No.

Q. During this period of the interrogation that you told us about, you made no inquiry about where was the knife, or what did he do with the weapon, or anything like that?

A. Well, I didn't have too much knowledge about what the actual cause of death was, because I was tied up on the investigation, and I don't believe the knife entered into the thing, until after the body had been taken to the Coroner, and I had had no reports.

Q. All right. Anyway, this questioning at 1:10 a.m. continued until about when, as far as you personally are concerned?

A. Well, there, again, I was probably in and out of the office where the suspect was for—until, I would say, about around 2:00 o'clock, somewhere around a quarter to 2:00 or a quarter after 2:00.

Q. All right, then where did you go?

[fol. 377] A. Well, then I left and went back to the homicide—where our office is.

Q. How far was that from the room in which the defendant was being questioned?

A. Well, our office consists of three—two squad rooms, one front room, and the Captain's office. I imagine it is no more than 30 feet, 35 feet.

Q. The Captain's office being Lt. Armstrong's office?

A. Lt. Armstrong, yes.

[fol. 378] Q. Then you went back to the homicide office. Then when is the next time you saw the defendant?

A. Well, I was back in the homicide office and I believe that I was joined by Inspector Kerr, Lt. Armstrong and Sgt. Hooper. I didn't return to the front office of the Bureau because my partner, Gravante, was in Armstrong's office with Hooper. So I went to the front office and stood by out there.

Q. When did you next see the defendant, then?

A. I next saw the defendant when he walked out of Lt. Armstrong's office with Gravante and they went to the laboratory, that is where they said they were going.

Q. What time was it then?

A. I imagine it was around 3:00 o'clock.

Q. Well, now, Sgt. Gotch, from the time that the defendant was initially put under arrest in the early afternoon until the time that you told us that—we are up to now about 3:00 o'clock the next morning—except for these brief intervals you have described, he was continuously in your presence, is that right?

A. Yes, sir.

Q. That is, you were in and out but you were always in the vicinity?

A. That's right.

Q. You were constantly on the case until the early hours in the morning?

[fol. 379] A. Yes.

Q. What time did you last see the defendant on the morning of the 6th after 3:00 o'clock a.m.?

A. When was the last time I saw him?

Q. Yes, where did he go that you saw?

A. We had returned from the 1100 Somera Road to the station.

Q. I am talking about 3:00 a.m. now.

A. You mean where did I see him after 3:00 a.m.?

Q. I am sorry. You mentioned that the last time you saw him was when your partner was taking him to what appeared to be the direction of the laboratory at 3:00 o'clock.

A. Yes.

Q. When next did you see the defendant?

A. When he returned to Lt. Armstrong's office.

Q. When next did you see him after that?

A. The next time I saw him was when Gravante came out and said he had signed a confession—given him a confession.

Q. Then where did you go from there? Did you continue to stay in the West Los Angeles Station, or what did you do?

A. No, we asked the defendant to go to 1100 Somera Road with us.

Q. This was about what time in the morning?

[fol. 380] A. I imagine between 3:30 and 4:00.

Q. All right. From there you went from the West Los Angeles Station to Somera Road, is that right?

A. Yes, sir.

Q. How long did it take you to get there?

A. I have no idea—ten or fifteen minutes, twenty minutes.

Q. When you got to Somera Road was there anyone there to let you in?

A. No, we had to call someone to let us in; they hadn't arrived yet.

Q. When was it you got into the premises on Somera Road, approximately?

A. I really don't recall. It was five minutes after we arrived there.

Q. You spent some time talking to the defendant in the premises at Somera Road, is that right?

A. That is correct.

Q. And you asked him questions there?

A. That is correct.

Q. How long did you stay there, approximately, on Somera Road?

A. Oh, I imagine a half-hour.

Q. Then from there where did you go?

A. I didn't return with the defendant.

Q. That is what I want to know, so the last time you

[fol. 381] saw him was sometime between 4:30 and 5:00 a.m. on the morning of the 6th?

A. Sometime between 4:00 and 4:30; then I again saw him at 5:00 a.m.

Q. Where did you see him at 5:00 a.m.?

A. When I booked him in the jail—when I returned him to the jail.

Q. When was the next time you saw him on that morning, then?

A. 5:00 o'clock.

Mr. Armstrong: I have nothing further of this witness.

Cross-examination.

By Mr. Alexander:

Q. Officer Gotch, you said something about during the time he was booked he had injuries to his face and his left hand; do you mean by that he received those injuries during the booking?

A. No.

Q. When had you first seen those injuries on the defendant?

A. I had first seen those injuries on the defendant at his apartment at 5128 Marathon.

Q. Why did you call Dr. Dean?

A. I didn't call Dr. Dean; I just called the police doctor. [fol. 382] He just happened to be the one that was up.

Q. What was the purpose in doing that?

A. It is necessary when you book a man into jail who has injuries to have a medical treatment slip on him, what we call an m.t. slip before the jailer will accept the man as a prisoner.

Q. That is a regulation of the Department, is that what you mean?

A. That is correct.

Q. About 3:00 a.m. you saw the defendant and Gravante leave Lt. Armstrong's office and go to the laboratory?

A. That is correct.

Q. At that time did you see Exhibit 18 or any part of Exhibit 18?

A. I did.

Q. How much of Exhibit 18 was written at that time?

A. Oh, I didn't count the pages at that time. I went in and read the top page. It was lying on Lt. Armstrong's desk. There was more than one page written at that time.

Q. After Armstrong and the defendant returned from the laboratory did the defendant continue writing?

A. You mean after Gravante and the defendant?

[fol. 383] Q. Yes.

A. Yes, They returned to Lt. Armstrong's office and the defendant sat down and continued writing. I didn't go in the office. I was curious and naturally I was trying to see what was happening.

Q. Sgt. Gotch, you said you went to Somera Road with the defendant, and I take it you went to the McCauley house, is that right?

A. That is correct.

Q. Before leaving for the McCauley home was Exhibit 18 completely done?

A. It was completely done. I read it before we left for Somera Road.

Q. What was the purpose in going to Somera Road?

A. Our purpose was to re-enact the murder of Norma McCauley.

Q. At that place was any part of Exhibit 18 written?

A. No, sir.

Q. That was all completed, is that right?

A. That is correct. I don't even—we didn't take it because that stayed in the office.

Q. You went there just to re-enact the killing?

A. That is correct.

Q. With the defendant, is that right?

A. That is correct.

[fol. 384] Q. Sgt. Gotch, as a matter of fact, on May 5th and the morning of the 6th and up to the time People's Exhibit 18 was completed, did you know or had you learned the cause of Norma McCauley's death?

A. No, I didn't know it.

Q. Would you say you did not learn it until after the autopsy?

A. That is correct.

Q. And that was sometime on the 6th, is that right?

A. That was on the 6th, and I worked until 10:00 o'clock

on the morning of the 6th, and I did not—I knew it sometime on the 6th, I believe.

Q. After the completion of the autopsy?

A. That is correct.

Mr. Alexander: I have here a photograph, if the Court please. May it be marked People's next in order, No. 19, I believe?

The Court: It may be marked People's Exhibit No. 19 for identification.

By Mr. Alexander:

Q. Sgt. Gotch, you said that your offices consist of three offices, is that right?

A. Yes, sir.

Q. At the West Los Angeles Detective Division?

A. Yes, sir.

Q. I show you People's Exhibit No. 19 and ask you if [fol. 385] you recognize that photograph?

A. I do.

Q. What is that a photograph of?

A. That is a photograph taken from Lt. Armstrongs' office and shows the center office, and my partner Gravante is in it seated at the homicide desk in the third office. There is an additional front entrance that is considered an office.

Q. What separates these offices?

A. Glass doors, or doors with glass in it.

Q. A door with glass, is that right?

A. That is correct.

Mr. Alexander: I have here another photograph, if the Court please. May it be marked People's Exhibit No. 20 for identification?

The Court: It may be marked People's Exhibit No. 20 for identification.

By Mr. Alexander:

Q. I have here a photograph, being marked People's Exhibit No. 20 for identification. Do you recognize that?

A. I do.

Q. What is that?

A. That is a picture of Lt. Armstrong's desk in his office at the West Los Angeles Detective Bureau.

Q. Is that the desk in which the defendant sat and wrote People's Exhibit No. 18?

[fol. 386] A. It is.

Q. As you look at that picture and look through these windows what do you face?

A. Face Purdue Street.

Q. To the right of this picture is there another window?

A. Yes, sir, two windows.

Q. What do they open out to?

A. They open out to a driveway, and right next to the driveway is a house.

Q. I have another photograph, if the Court please. May this be marked People's Exhibit No. 21?

The Court: It may be marked People's Exhibit No. 21 for identification.

By Mr. Alexander:

Q. Directing your attention to People's Exhibit No. 21, do you recognize that?

A. I do.

Q. What is that?

A. That is a picture of Lt. Armstrong's office and his desk, and the two windows on the south side of the office overlooking the driveway. It shows the house next door.

Q. Directly outside of these windows you say there is a house?

A. Yes, sir.

Q. About how far from the police premises is this house?

[fol. 387] A. It is the width of the driveway, I imagine ten or twelve feet.

Q. Is it an occupied house, or was it an occupied house on the morning of July the 6th?

A. To the best of my knowledge it was occupied.

Q. Directing your attention again to People's Exhibit No. 19, as we look at that picture, and immediately to the left, what is outside those offices on the left?

A. On the left is the entrance room to the Detective Bureau. That is where the public comes in to the desk and makes their complaints, makes their report.

Q. Does that room run in the length of your three offices?

A. No, it does not. It runs the length, I would say, of about two offices, and then it goes on to a hallway.

Q. Which two offices?

A. Lt. Armstrong's office, and the center office is occupied by the Burglary team. That would be the two offices toward the east, and there is a counter across.

Q. And then there is the hallway?

A. Yes, sir.

Q. In the area you have described immediately to the left of these offices, is that where the newspaper men were that morning?

[fol. 388] A. Yes, sir.

Q. Do you recall whether there were many newspapermen there?

A. There were quite a few.

Mr. Alexander: That is all at this time, your Honor.

The Court: Anything further of this witness?

Mr. Armstrong: Yes.

Voir dire examination (continued).

By Mr. Armstrong:

Q. Sgt. Gotch, I believe you testified earlier when called by the People, that the photographs had been marked in evidence, Exhibits 11 through 17, were taken on the morning of the 5th under your direction, is that not right?

A. Yes, sir.

[fol. 389] Q. And at that time you saw Mrs. McCauley's body, didn't you.

A. That is correct.

Q. You saw the stole around her neck?

A. That is correct.

Q. While you were there, the Coroner came and picked up the body?

A. That is correct.

Q. You also saw the front of the body?

A. That is correct.

Q. You saw the wounds of the body?

A. I didn't see any wounds on the body there.

Q. You didn't see the wounds in the upper part of the chest, or the wounds in the arm?

A. No, she was covered with blood and there was no way of me telling that there were any wounds. I didn't see what

would mean to me a stab wound or what would mean to me to be a gunshot wound.

Mr. Armstrong: All right, nothing further.
Mr. Alexander: That's all.

(Witness leaves stand.)

The Court: Your next witness, Mr. Armstrong.
Mr. Armstrong: Officer Stambler. Is Officer Stambler here, please?

[fol. 390] WILLIAM STAMBLER, called for voir dire examination by the defendant, after being duly sworn, was examined and testified as follows:

The Clerk: Be seated and state your name, please.
The Witness: William Stambler.

Voir dire examination

By Mr. Armstrong:

Q. Mr. Stambler, you are a police officer in the City of Los Angeles?
A. I am.
Q. You are attached to what department?
A. I am.
Q. You are attached to what department?
A. West Los Angeles Detective Bureau.
Q. Were you so attached on the 5th of July, 1955?
A. I was.
Q. On the 5th of July, 1955, did you have occasion to see this defendant?
A. I did.
Q. What was the first time you saw the defendant?
A. At his apartment on Marathon.
Q. Approximately what time of the day was that?
A. Approximately about 2:00 o'clock or 2:15, around that time.
Q. When you came into the apartment, did you go in [fol. 391] alone or with someone?
A. Sgt. Gotch was with me.

Q. When you first saw the defendant, where was he in the apartment?

A. Sitting in a chair.

Q. Was he handcuffed?

A. Not at that time.

Q. Were there any other officers from any other station there?

A. I think that two officers from the Hollywood Division were there.

Q. At that time he was not handcuffed is that correct?

A. No, sir, I think I handcuffed him.

Q. Do you remember if the Hollywood officers took their handcuffs off and you put your handcuffs on?

A. I think they did.

Q. All right. At that time, when you came into the room did you have a conversation with the defendant?

A. Yes, I had a little conversation with him.

Q. What was the substance of that conversation?

A. We were going to search his house, his apartment.

Q. All right. What did he say?

A. He said, asked us if we had a warrant, but we told him no, but we were arresting him on suspicion of murder.

Q. At that time the defendant was under arrest, is that [fol. 392] right?

A. Yes, sir.

Q. You were making this search incident to that arrest, is that right?

A. No, after the arrest was made.

Q. After the arrest was made?

A. That's right.

Q. All right. Then while you were doing this searching did you have a conversation; did you say more to the defendant? Did you have any further conversation with him?

A. No, not for about an hour and a half, never said a word to him.

Q. I beg your pardon; I didn't hear your last answer.

A. No, I think we didn't have much to say. He didn't do much talking and we didn't, either.

Q. For about an hour and a half?

A. Yes.

Q. Then at that time did you have a conversation with the defendant?

A. I said to him, "You don't seem to be interested about this thing at all, do you?"

At that time he says, "Well, I have an idea what it is."

I says, "Well, you couldn't have, because I said nothing about the case at all," or something similar to that.

[fol. 393] Q. All right, what else was said?

A. That was all.

Q. All right. What time did you finally leave the apartment that day?

A. Oh, it was possibly around 4:00 or a little after.

Q. And you went where?

A. We went to Central Station.

Q. Did you ride in the same automobile with the defendant?

A. Yes, sir.

Q. Did you have a conversation with him on the way to Central Station?

A. No.

Q. Did you talk with Sgt. Gotch?

A. No, we didn't do any talking at all; pretty tired by then.

Q. All right. Then when you got to Central Station, when was the next time you had any conversation with—that you, personally had, when is the next time that you had any conversation with the defendant?

A. I think when I brought him a sandwich and some milk.

Q. You brought him a sandwich and some milk?

A. That's right.

Q. Where was he when you gave that to him?

A. He was in the laboratory, the sound laboratory where [fol. 394] the polygraph operator's office is.

Q. Who else was present at that time?

A. Sgt. Gotch, my commander, Armstrong, Inspector Kerr, and myself.

Q. What was the general subject of that conversation at that time that you had in Central about 8:30?

A. I think we asked him if he would take the lie detector test, and if he was not involved, then he could clear himself and it would give us a chance to go out and look for the parties.

Q. What did he say?

A. He said he wouldn't take it.

Q. Did he say anything at that time that he wouldn't take it until he had a chance to talk to an attorney?

A. I never heard that statement.

Q. Didn't he at that time assign that as a reason for not taking the lie detector test; didn't say he didn't want to take it until he talked to an attorney?

A. He didn't say that to me, because I walked out after he refused to take it.

Q. You walked out; when is the next time you saw him?

A. When we took him back to the West Los Angeles Detective Bureau.

Q. You didn't have any conversation with him in Central?

[fol. 395] A. Yes.

Q. You are certain of that?

A. That's right.

Q. May I direct your attention to the adjacent room to the polygraph room; didn't you have a conversation with Sgt. Gotch and the defendant at that time that lasted about an hour and a half?

A. No, sir.

Q. How long did this whole conversation that you had with the defendant in the polygraph room last?

A. Oh, I would say I, myself, personally probably didn't talk to him over thirty minutes or so.

Q. Directing your attention to the thirty minute conversation you had in the polygraph room, what did you say to him then, and what did he say to you, as best you recall?

A. I think I answered that by saying I asked him why he didn't want to take the polygraph test, and he says he just didn't want to take it. I told him that, well, if he took this thing and it would show that he was not involved in this, it would give us a chance to go out and find the person that was.

Q. All right, that is what you told him at that time. Do you remember anything else that was said at that time, as far as you were concerned?

A. No, I don't.

[fol. 396] Q. While you were having this conversation with the defendant, do you remember addressing any profanity toward the defendant?

A. No, sir.

Q. Is it your testimony that you don't recall or that you did not?

A. I did not.

Q. You did not say anything obscene to the defendant?

A. No, sir.

Q. As a matter of fact, didn't Sgt. Gotch caution you not to continue this abusive type of language to the defendant?

A. No, sir, I have never talked abusively to any person.

Q. Do you remember calling the defendant a rotten son-of-a-bitch at that time?

A. I don't use that language. No.

Q. If you will just answer the question, I will try to pose the question.

A. Go right ahead.

Q. Do you remember calling the defendant that?

A. No, sir.

Q. Do you remember in that conversation saying to the defendant words in substance as follows, omitting the obscene terms, that, "You little," and then that obscene word which I will omit—"you know you have been shaking that [fol. 397] woman down and then you went up to her place and murdered her," do you remember saying anything to that effect?

A. No, sir.

Q. All right, eliminating the obscene word, then assuming that was not said, do you remember saying the other words I mentioned?

A. Never remember that.

Q. Except for this moment or two of remarks you told us about, you are unable to recall anything else that was said during the thirty or thirty-five minutes that you were with the defendant, is that right?

A. That's right.

Q. Without remembering the actual conversation, itself, can you remember the substance of anything else that was said?

A. No, I don't.

Q. How long have you been a police officer?

A. Twenty years.

Q. On this particular occasion in the polygraph room, do you remember a conversation you had with the defendant, saying to the defendant words in substance as follows,

"Here you have been told that she is dead, and you aren't showing any emotion, you aren't reacting in any way"?

A. No, sir.

Q. To this news?

[fol. 398] A. No, sir.

Q. You didn't say anything like that, either?

A. No, sir.

Q. All right. When was the next—you told us a little while earlier that after the defendant refused to take the polygraph test you walked out of the room?

A. That's right.

Q. Then when did you next see the defendant?

A. When we were getting ready to take him back to West Los Angeles.

Q. About how much later was that?

A. We got to the West Los Angeles Division approximately around 10:00 to 10:30.

Q. You say you have been a police officer twenty years?

A. Yes.

Q. Do you remember making the remark to Sgt. Gotch while you were in the polygraph room, "It is not like the good old days; I wish it were like in the good old days"?

A. No.

Q. You didn't say anything like that at all?

A. No.

Q. You next saw the defendant approximately 10:30, where?

A. I took him—Sgt. Gotch and myself took him to the West Los Angeles Detectives.

[fol. 399] Q. Where did you take him in the West Los Angeles Detectives?

A. I took him up in the squad room.

Q. Who was present there?

A. Officer Gravante, Sgt. Gotch, and Armstrong—that is all I saw at that time.

Q. Now, it is about 10:30, is that correct?

A. That's right.

Q. In the West Los Angeles Detective Squad Room with Gotch, Gravante, Lt. Armstrong, and yourself present?

A. That's right.

Q. Then was the defendant questioned at that time by any one of the four of you, or all four of you?

A. No, sir, I left.

Q. How long were you in the room before you left?

A. Just a matter of a few minutes.

Q. Then when did you next see the defendant?

A. The next day, when we took him to the district attorney's office.

Q. What time was it when you left the West Los Angeles station office, Officer Stambler, approximately?

A. You mean when I went home?

Q. Yes.

A. Approximately around 11:30 or 12:00 o'clock.

Q. At any time from the time that you came into the defendant's room in the early afternoon until you left the [fol. 400] defendant at, the time you just testified to, after 11:00 o'clock, did the defendant tell you he would like to call an attorney?

A. Never heard him say that.

Q. That is, he didn't say it to you?

A. That's right.

Q. Did he say it to anybody else in your presence?

A. Don't know, never heard him say anything about an attorney.

Q. Never heard that subject mentioned at all to anyone?

A. No, sir.

Q. What did you do, Officer Stambler, from the time that you arrived at the West Los Angeles station at 10:30 until you left for home about 11:30?

A. Made reports.

Q. Did you observe who was with the defendant at that time?

A. I never came back upstairs.

Q. Do you know Officer Willis?

A. I know of him.

Q. Jack Willis?

A. He is the polygraph operator.

Q. Yes. You mentioned that you had a conversation with the defendant in the polygraph room up there. Were you present at the time Jack Willis was talking with the [fol. 401] defendant?

A. I think I was there a few minutes and walked out.

Q. And at that time was the general tone of the conversa-

tion that Jack Willis was telling the defendant he should submit to the polygraph examination?

A. I think he had some conversation. I am not sure what his conversation was.

Q. In any event, at the time that Willis was talking to the defendant, even though the remark was not addressed to you, did you hear the defendant say anything to Mr. Willis that he didn't want to take a test until after he had a chance to confer with an attorney?

A. I never heard that statement made.

Mr. Armstrong: I have nothing further of this witness.

Mr. Alexander: No questions.

The Court: That's all.

(Witness leaves stand.)

The Court: We will adjourn for the day at this time. Ladies and Gentlemen of the Jury, do not discuss the case among yourselves nor talk to anyone about it or form any opinions or conclusions until the matter is finally submitted to you.

We will take up again at 10:00 o'clock tomorrow morning.

(Whereupon the aforementioned entitled cause was adjourned at 4:30 p.m., Monday, November 21, 1955, to reconvene 10:00 a.m., Tuesday, November 22, 1955.)

[fol. 402] The Court: The jury being present we will have the next witness for the defendant on voir dire examination. Mr. Armstrong.

Mr. Armstrong: Sgt. Hooper, please.

J. H. Hooper, called as a witness on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

The Clerk: Be seated and state your name, please.

The Witness: J. H. Hooper.

The Court: If there are any witnesses in the courtroom who are going to testify here for either the People or the defendant will they please remain outside until called.

Voir dire examination

By Mr. Armstrong:

Q. What is your business, Mr. Hooper?

A. I am a Detective Sergeant.

Q. You are assigned to the West Los Angeles Division of the Los Angeles Police Department?

A. Yes, I am.

[fol. 403] Q. To the Detective Bureau there?

A. Yes.

Q. You were assigned there on the 5th of July, 1955?

A. Yes, sir.

Q. Directing your attention to the 5th of July, 1955, did you have occasion to see the defendant, Mr. Crooker, on that date?

A. Yes.

Q. That was where; where did you first see him?

A. In the Detective Bureau at the West Los Angeles Police Station.

Q. That was approximately what time?

A. That was around 11:00 o'clock in the evening.

Q. 11:00 o'clock in the evening?

A. Yes, about 11:00 o'clock.

Q. I assume from that, Sgt. Hooper, that you had occasion to go to the defendant's apartment?

A. No, I did not.

Q. At 11:00 o'clock in the evening what room were you in when you first saw the defendant?

A. In the office of Lt. Armstrong.

Q. Who was present?

A. Lt. Armstrong, Inspector Kerr, Sgt. Gotch, Officer Gravante, the defendant and myself.

Q. How about Officer Stambler?

[fol. 404] A. No, he was not there.

Q. He was not there?

A. Not that I recall, he was not.

Q. On that occasion were these other parties present when you came into the room? Did you all come in together, or what?

A. I believe Inspector Kerr and Lt. Armstrong and the defendant were in the room, and I am not sure whether

Gotch and Gravante were in the room when I first entered or not.

Q. In any event, you came in the room, and did you introduce yourself to the defendant, or what were your first words with him, as you recall?

A. I don't recall the first words to him. I entered into the questioning.

Q. That was approximately 11:00 o'clock; and how long did this questioning last, as far as you personally were concerned?

A. Oh, I would say 45 minutes or an hour or thereabouts, the first portion of it.

Q. During that 45 minutes or an hour, what was the general subject matter of the questioning?

A. He was being questioned about the wounds on his hand and his neck and face. He was questioned about his background, his family, and so on.

Q. How about questions specifically referring to Mrs. [fol. 405] McCauley?

A. Yes, he was asked questions about Mrs. McCauley, if he knew her and if he had seen her, and when; and many questions about her.

Q. Do you recall at that time if he was asked if he had killed Mrs. McCauley, during that hour of questioning?

A. I don't know if a question was phrased exactly like that, but in general, yes.

Q. In substance do you remember if he was asked if he had stabbed Mrs. McCauley?

A. No, he was not asked that.

Q. At least that is your recollection; he was not asked that question?

A. Not as I recall.

Q. Do you remember if he was asked if he had strangled Mrs. McCauley?

A. No, he was not asked anything about how she was killed. I don't know—I don't believe any of the other officers knew at that time what had caused her death so there were no questions regarding how she died.

Q. Had you seen Mrs. McCauley's body before this questioning?

A. No, I had not seen it.

Q. Was any question asked of the defendant by you as to whether or not he possessed a knife?

[fol. 406] A. No, I don't recall asking that question.

Q. Would it refresh your recollection if I said that some discussion was had about some Navy knives, do you remember any discussion on that point at all?

A. No, I had no discussion about Navy knives.

Q. Was there any questioning, I mean during this period you were there from 11:00 to 12:00 o'clock, did the defendant make a request of you that he be allowed to see an attorney?

A. No, he did not.

Q. Did he make a request during this period of time we are talking about, from 11:00 to 12:00 o'clock, of anybody else that you heard?

A. No.

Q. Did he say anything at that time about not wanting to answer such questions as were being posed until he had an opportunity to talk to an attorney?

A. No, there was no discussion of an attorney. When he didn't want to answer the question he just said he would rather not answer, or rather not make a statement about that.

[fol. 407] Q. Was there anything else that was mentioned in this questioning period for the hour that you can recall now that we haven't covered?

A. Not that I recall.

Q. All right. You said this lasted from 11:00 to approximately 12:00. Then——

A. (Interrupting) Approximately 11:00 to approximately 12:00 to 12:15 or so.

Q. When did you next see the defendant? What happened —strike it.

When this questioning period came to an end, what happened then?

A. He was taken downstairs and booked, I believe, a little after 12:00 o'clock, and then he was brought back up in the office probably around 1:00 o'clock, and shortly after that he was examined by a doctor. Then there was more questioning, probably for another forty-five minutes or so.

Q. In this questioning period from 1:15, after the doctor had finished examining him—would that be about right?

A. That would be about right.

Q. From 1:15 until about 2:00 o'clock, would you say?

A. Yes, I would say.

Q. Who was present at that time?

A. The same officers.

[fol. 408] Q. That would be Inspector Kerr, Lt. Armstrong, Officer Gravante, and yourself?

A. And Gotch.

Q. And Sergeant Gotch?

A. Yes.

Q. And during this period of time, now, what were the general line of questions?

A. About the same as before. It mainly concerned the wounds that he had, and his explanation of how he got them.

Q. At this time was there any more discussion to the effect that—whether or not he had killed Mrs. McCauley?

A. Yes. It was pointed out to him that we believed that he had, because of the wounds he had, and the statements he made concerning how he got the wounds. I believe we told him that we thought he had killed her.

Q. And what was his reply to this?

A. He said that he didn't want to discuss it, didn't want to make any statement about it.

Q. When you had asked him previously if he killed Mrs. McCauley—you said you asked that question, perhaps not that exact phraseology—what did he say at that time?

A. About the same thing; that he preferred not to discuss it.

Q. Did you ever heard him deny it?

[fol. 409] A. I don't recall that I ever heard him deny it, no. He refused to discuss it.

Q. Did you hear any profane language addressed to the defendant?

A. I don't recall hearing any. There could have been some. I don't recall any profanity.

Q. Do you remember if you, yourself, addressed profane language to him?

A. No.

Q. You don't remember, or you didn't?

A. I don't recall having used any profanity.

Q. Do you remember any obscene language, as distinguished from profane language?

Mr. Alexander: If the Court please, I have not objected up to this point, but that question implies that that language was used, and there is no evidence to that effect. I am objecting to the form of that question.

The Court: Objection overruled. You may answer.

The Witness: Read the question.

(Reporter reads question.)

The Witness: No, I am sure there was no obscene language.

By Mr. Armstrong:

Q. Sgt. Hooper, did you ever strike the defendant?

A. No, I did not.

Q. Specifically, did you strike him in the vicinity of the [fol. 410] stomach with your fist?

A. I did not.

Q. Did you address words to the defendant substantially as follows:

"We are tired of the answers and the run-around you are giving us, and we are going to ask you questions and you are going to give us some straight answers. If you don't, you are going to be sorry about it."?

A. No. I told him we were tired of the answers that he was giving us, and we wanted to hear the truth. I made no such statement that he would be sorry.

Q. Did you say anything about how long you were going to continue this questioning?

A. No.

Q. Did you make a statement that this questioning was going to go on all night, if necessary, and all day the next day, if necessary?

A. No, I didn't make any statement like that.

Q. You say this conversation went on until about 2:00 o'clock. What happened at 2:00 o'clock?

A. About, oh, 2:00, or probably before 2:00, we left the defendant in the room with Officer Gravante.

Q. "We" being all the rest of the officers, Inspector Kerr and Sgt. Gotch and Lt. Armstrong and yourself?

A. Yes.

[fol. 411] Q. Where did you go?

A. Into some other part of the building. I believe I went back to the Homicide Room.

Q. When did you next see the defendant?

A. About 3:30.

Q. And then what happened at that time, at 3:30?

A. At that time I went back in the room, in the lieutenant's office, and read a paper that he had written.

Q. Then what happened?

A. A few minutes later we went from there up to the McCauley residence.

Q. When you got to the McCauley residence, what happened there?

A. The defendant showed us how he had entered the home, showed us where he had hidden in the room, showed us where Mrs. McCauley was, and told us how he had killed her.

Q. And at that time did you ask the defendant how the blood stains got on the little chairs that have been referred to as T.V. chairs, I think?

A. Yes, I did ask him that.

Q. What did he reply to that, do you remember?

A. He said that he didn't know, that there was a lot of blood. He didn't know how it got on there, but there was a lot of blood, and there was a lot of struggling and thrashing around, and he presumed that it was splattered on the [fol. 412] chairs.

Q. Did you ask him about the blood on the drapes?

A. Yes. I showed him that—I asked him about that, and again he said he didn't know how it got there, other than that there was a lot of blood, and it probably got splattered there.

Q. Did you ask him about where the knife was?

A. Yes, I did.

Q. What did he say to that?

A. He said that he had found a knife on a dressing table in the hallway, leading from the bedroom to the main hallway.

I asked him where the knife was now, or at that time, and he said that he didn't know, that he believed that he had put it in his pocket and that he had taken it away with him.

but he didn't know what had happened to it, whether he had thrown it away or whether he had burned it in the incinerator with his clothing.

Q. Did you at that time check out there in the hallway to see if there was a dressing table out there?

A. Yes. He pointed out a table, a dressing table.

Q. By way of summarizing your testimony, Sgt. Hooper, it is your testimony that at no time from 11:00 o'clock in the evening, when you first met the defendant, until the early morning hours when you concluded your investigation, that you heard the defendant say anything about wanting to [fol. 413] talk to an attorney?

A. No, I heard no such request.

Q. Is your answer that you do not recall, or that you did not hear it?

Mr. Alexander: That has been asked and answered. He said he heard no such request.

Mr. Armstrong: I am simply asking him what is the type of answer he is making.

The Court: You may answer. Reframe your question.

By Mr. Armstrong:

Q. I will rephrase the question. When you say you heard no such request, are you telling us there was no request, or you don't recall hearing any request?

A. He made no such request in my presence.

Mr. Armstrong: Cross examine.

Mr. Alexander: No questions at this time, your Honor. May he be excused?

The Court: You may be excused, Officer.

Mr. Armstrong: Inspector Kerr.

[fol. 414] HENRY W. KERR, called as a witness on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

The Clerk: Be seated and state your name, please.

The Witness: Henry W. Kerr, K-e-r-r.

Voir dire examination.

By Mr. Armstrong:

Q. What is your occupation?

A. I am an inspector of the Los Angeles Police Department, assigned to the Detective Bureau.

Q. And are you assigned to a particular substation of the Los Angeles Police Department?

A. No, sir. I am Commander of Detective Area No. 1, working out of the Police Building.

Q. What squads does that consist of?

A. Hollywood, Wilshire, West Los Angeles, Venice, and Valley Detective Divisions.

Q. So that we can understand, how does the rank of Inspector fit into other ranks, such as lieutenant, and captain?

A. It is between the rank of captain and deputy chief in our department.

Q. You are superior to a captain and subordinate to a deputy chief?

[fol. 415] A. Yes, sir.

Q. Inspector Kerr, I take it that you held this rank and had this position on July 5th of this year?

A. Yes, sir.

Q. On July 5th of this year, did you have occasion to see the defendant, Mr. Crooker?

A. Yes, I did.

Q. What was the first occasion that you saw him?

A. In the apartment at 5128 Marathon Street.

Q. Approximately what time was that?

A. That was approximately 3:30 in the afternoon.

Q. At the time you arrived, who else was present?

A. The defendant, Officer Gotch, Officer Stambler, Capt. Hillson, Chief Forensic Chemist Pinkerton, and Mr. Adolph Alexander and Lt. Armstrong was with me.

Q. And at the time you came into the room there in the apartment, were you introduced to the defendant?

A. No, sir.

Q. Did you have an occasion to speak to the defendant while you were there?

A. I don't recall having any conversation with him, no, sir.

Q. Did you hear any other conversation that others were having with him at that time?

A. There was very little conversation with him in my presence. There might have been something to the effect of [fol. 416] his present employment or schooling or something of that nature.

Q. Were you in the room with the defendant all the time, or were you in and out of the room?

A. I was in the apartment during that entire time, part of the time in the kitchen, part of the time in the bathroom.

Q. And the defendant was where?

A. Sir?

Q. And the defendant was where?

A. He was seated in the living room.

Q. He was in the living room?

A. Yes.

Q. This apartment, so we get oriented, consisted of a living room, kitchen and bathroom; anything else? Was there a bedroom or a living room?

A. No bedroom; no, sir.

Q. It was a studio type of apartment?

A. Yes.

Q. And in addition to that it had a dressing room?

A. Yes.

Q. And this comprised the entire apartment?

A. Yes.

Q. How long did you remain there?

A. Approximately an hour and a half.

Q. That would be until about 5:00 o'clock?

[fol. 417] A. Yes, sir.

Q. Then when you left, did you leave in the same automobile with the defendant?

A. No. Lt. Armstrong and I rode together when we left there.

Q. And you went where?

A. To the old Central Police Station where the Scientific Investigation Division was located at that time.

Q. Did you see the defendant there?

A. Yes, I did.

Q. What time was it that you next saw the defendant when you left the apartment about 5:00 o'clock?

A. It was about 5:15 or 5:20.

Q. At that time did you have any conversation with the defendant?

A. There was some conversation in connection with the photographs which were taken at that time.

Q. What kind of photographs were those, Inspector, newspaper photographs or police photographs?

A. These were police photographs.

Q. What was that conversation that you just indicated took place?

A. The conversation was where he was to sit, how he was to turn his head, the position in which we wished him to pose. [fol. 418] Q. Then, after this photography was completed what next happened with respect to the defendant, to your knowledge?

A. To the best of my knowledge he was taken into another room about 7:15, approximately.

Q. Let's back up just a little bit; you got there about 5:15 or 5:20 at the Central Police Station, and these photographs were taken, and I assume that that just took a few minutes, is that right?

A. No, it took a considerable length of time to set up the camera and lights. There was some discussion with the photographer as to what we wanted to show in the pictures, and so forth.

Q. That took approximately how long altogether?

A. Approximately an hour and a half or so.

Q. During the time that all of this was being done, that these photographs were being made, who was present besides yourself and the photographer?

A. There were several officers who were in and out of the room at various times, Sgt. Gotch, Officer Stambler, Lt. Armstrong, Ray Pinkerton, the police photographer, and myself.

Q. Did you spend most of the time in the room where the photographs were being taken or in the hallway outside?

A. It would be hard to say. I was in both the hallway and [fol. 419] the room where the photographs were being taken.

Q. At the time that all of this setup was being done, I take it that it was primarily the photographer who was doing the work in this setting up of the lights and so forth?

A. Yes.

Q. Did you observe the other officers questioning the defendant at that time?

A. He was not asked any questions about the case under discussion, no.

Q. All right. Then, when this was completed at about, we will say—say it took an hour or an hour and a half?

A. Yes, I said about an hour and a half, to the best of my recollection.

Q. That would be a few minutes before 7:00, then. What happened then?

A. Well, Lt. Armstrong and I went to dinner around 8:00 o'clock or a little before.

Q. Before you left for dinner there appeared to be an interval of time there, about possibly 45 minutes to an hour; did you have anything to do with the defendant during that time?

A. I did not, no, sir.

Q. You were not present—and of course we want to know [fol. 420] of your own direct knowledge what you observed—when was the next time you were in the same room with the defendant for any period, other than just in and out?

A. That would be on our return to the West Los Angeles Station.

Q. As far as any questioning was concerned at Central, you were not present at that time?

A. I was not present when any questions were asked him about the case, no, sir.

Q. How about when some questioning was done about whether or not the defendant would take a lie detector test, were you present at that time?

A. No, sir.

Q. All right. Then back at the West Los Angeles Police Station, what time was this that you talked to him then?

A. I didn't talk to him. I was present during some interrogation which commenced about 11:15, about 11:15, yes.

Q. From 11:15 until about when?

A. Well, the other time involved—I mean the total time involved would have been from 11:15 until about 1:45, until 2:00 o'clock. There were a couple of breaks during that period.

Q. This questioning took place where?

A. In Lt. Armstrong's office.

[fol. 421] Q. What was the substance of the questions that were being asked at that time?

A. Well, there was a good deal of conversation about his background; asking him about his family associations and a few other questions about his activities on the day of July the 4th and the evening and the night of July 4th.

Q. Was reference made to Mrs. McCauley?

A. Yes.

Q. Was the defendant at that time asked if he had killed Mrs. McCauley?

A. I believe he was.

Q. Do you remember what his answer was?

A. His answer was no—I beg your pardon, I would like to correct that.

Q. All right.

A. Any time that he was asked a question having to do with whether he had been on Sunset Boulevard or on Somera Road, in the house at 1100 Somera Road, with one or two exceptions he indicated he did not wish to discuss it.

Q. Were you making notes at this time, Inspector?

A. No, sir.

Q. Do you recall his being asked if he were on Sunset Boulevard and he said he didn't care to discuss it, and he was asked if he were on Somera Road and he answered no, [fol. 422] or is it your recollection he didn't care to discuss either Sunset or Somera Road?

A. One of the questions asked, it was either as to whether he had been on Somera Road or whether he had been in the house at 1100 Somera Road and he answered no. The other questions he answered he did not care to discuss it.

Q. At the time he said he didn't care to discuss it did he say he didn't care to discuss it until he had seen an attorney, or how did he phrase that?

A. To the best of my recollection it was to the effect that

he didn't wish to say anything which might involve him or implicate him in any way.

Q. Did he say anything about he didn't want to say anything that would involve or implicate him until he had had an opportunity to talk to an attorney or to call an attorney?

A. I don't recall anything about an attorney.

Q. Do you recall the conversation in which he was told that he would be allowed to call an attorney just as soon as the investigation was completed?

A. I don't recall any conversation about an attorney at that time.

Q. At any time either up to the point that we have discussed or at any time that you observed the questioning that was going on, do you recall the defendant requesting [fol. 423] an attorney, and any answer being given that he would be able to call an attorney when the investigation was completed?

A. No, sir, I don't recall any such conversation.

Q. Inspector, may I ask you if you remember a conversation in substance as follows, that Sgt. Hooper said to the defendant, "Are you not answering questions because you don't want to incriminate yourself," and the defendant replying to this, "That is not the idea; I am not worried about incriminating myself, I just don't want to answer questions until I have talked to an attorney"?

A. No, sir.

Q. Or do you recall any conversation similar to that, leaving out any parts of it?

A. I don't recall any conversation about the attorney, no, sir.

Q. When was the last time you saw the defendant, then, on this morning after—when I say morning, I am speaking after midnight of the morning of the 6th.

A. About 5:00 a.m.

Q. Did you go out to the place on Somera Road?

A. Yes, I did.

Q. You were present during that time, during the question that was going on there?

A. I was not in the same room with the defendant during [fol. 424] all of that period, no.

Q. Were you there during part of it?

A. No, I was spending most of my time looking through the rest of the house, searching the yard area.

Q. Do I understand that from, roughly, 11:15 to 1:45, do I understand you to say that you were in and out of the house at that time, that you were not continuously in Lt. Armstrong's office during this period of time?

A. No, I said there were a couple of breaks during that period.

Q. Except when these couple of breaks were going, were you there continuously?

A. To the best of my recollection, yes, sir.

Mr. Armstrong: I have no further questions of this witness at this time.

Cross-examination.

By Mr. Alexander:

Q. Inspector Kerr, as I take it, you were the highest ranking officer working on this case on the 5th of July, is that correct?

A. Yes, sir.

Q. Inspector, as I see the testimony, from the time that this defendant was arrested in the early afternoon of July 5th until the photographs were completed that evening at the crime laboratory and until after he left the Polygraph [fol. 425] Room, no questions were put to this defendant concerning the commission of this crime, is that correct, inspector?

A. It is my understanding that prior to his leaving the Polygraph Room, just before leaving there he was asked some questions about this case.

Q. But not until that time, is that right?

A. To the best of my knowledge, yes, sir.

Q. Will you tell us just why——

Mr. Armstrong: To which I object.

Mr. Alexander: This is cross examination, if the Court please.

The Court: You may answer.

A. The gentlemen who operate the polygraph equipment prefer to get a subject for questioning with as little previous

discussion of the case as possible. They prefer to start cold, so to speak, without having the details of the case having been discussed with him previously.

Q. Is that the reason he was not questioned concerning the crime until he was about to leave the Polygraph Room?

A. Yes, sir.

Q. You told counsel that during the questioning at West Los Angeles there were some breaks. Just what do you mean by that?

[fol. 426] A. Well, in one case coffee was brought into the room. On another occasion the defendant was examined by a doctor. At another time it was my understanding he was taken out of the room and downstairs for the purpose of completing the booking procedure.

Mr. Alexander: Nothing further.

The Court: Juror Richmond has a question.

Juror Richmond: I would like to ascertain from the witness if he was the first person to contact the defendant in this case in his apartment on July 5th, and if he was I have another question.

The Witness: I was not the first officer at the apartment.

The Court: Who was there when you arrived, Inspector?

A. Well, the people I mentioned earlier; there was Sgt. Gotch, Officer Stambler, Ray Pinkerton, Capt. Stillson, Mr. Alexander, and Lt. Armstrong arrived with me.

The Court: Were those officers there from the Hollywood station?

The Witness: No, sir.

The Court: Juryman Hoyt has a question.

Juryman Hoyt: Am I correct in assuming that the defendant had been arrested at the time you arrived?

The Witness: That was my understanding.

[fol. 427] Juryman Hoyt: Had he been at any point informed of the nature of the charge against him and the place the act was supposed to have been committed, and against whom the act was alleged to have been committed?

The Witness: It was my understanding he was aware of the nature of the charge, but the identity of the individual and the address had not been discussed.

Juryman Hoyt: He knew he was being arrested on a charge of suspicion of murder?

The Witness: That was my understanding.

Juryman Hoyt: But not aware of the identity of the one whom he was alleged to have murdered?

The Witness: That is correct.

The Court: Any further questions of this witness? That's all.

(Witness leaves stand.)

Mr. Armstrong: Is Mr. Willis here?

Mr. McCurdy: I don't know; he was not due until 11:00 o'clock.

Mr. Armstrong: I am sorry, I didn't think these other officers were here. I think it would be more orderly to call these other officers first. Mr. Krueger.

[fol. 428] EDWARD C. KRUEGER, called as a witness in behalf of the defendant, having been first duly sworn, was examined and testified as follows:

The Clerk: Please be seated and state your name.

The Witness: Edward C. Krueger.

Voir dire examination.

By Mr. Armstrong:

Q. What is your business, please?

A. Police Officer for the City of Los Angeles, assigned to the Hollywood Division.

Q. And you were so assigned on the 5th of July, 1955?

A. I was.

Q. On the 5th of July, 1955, did you have occasion to see this defendant?

A. I did.

Q. Where was that?

A. 5128 Marathon Street, City of Los Angeles, Apartment 105.

[fol. 429] Q. On that occasion did you go into the defendant's apartment?

A. I did.

Q. And how did you make your entry into the apartment?

A. With a key.

Q. And from whom did you obtain the key?

A. From the manager of the apartment house.

Q. Do you remember the name of that person?

A. I do not.

Q. Would a Mr. or Mrs. Norton refresh you?

A. No, it does not.

Q. Was it a woman or a man?

A. It was a woman.

Q. You obtained this key, and would you describe your entry, please?

A. I placed the key in the lock and turned it, and the door opened, and I took my revolver out and entered the room.

Q. When you got in the room, was the defendant inside?

A. He was.

Q. What was he doing?

A. He was standing in more or less the center of the room.

Q. How was he dressed?

A. He had on pajamas and a robe.

[fol. 430] Q. And what did you say to him when you came in the room?

A. I said he was under arrest.

Q. And what did he say?

A. He didn't say anything at that time, as I recall, more or less just stood there. I told my partner to put the handcuffs on him.

Q. Your partner's name is Jackson?

A. That is correct.

Q. You say the defendant at first didn't say anything. What was the first thing the defendant did say that you recall?

A. I don't recall his first words. I wasn't paying too much attention to what he was saying.

Q. Did he ask you what this was all about?

A. I recall him asking that, yes. I don't remember if it was the first words he said, or not.

Q. Do you remember what you replied to him?

A. I replied that there would be some other officers along shortly and they would explain it to him.

Q. When you placed him under arrest, did you say the words, or say, "You are under arrest"?

A. Yes.

Q. Did you say, "You are under arrest on a charge of murder", or anything else?

A. No, I did not.

[fol. 431] Q. You just said, "You are under arrest," period?

A. That is correct.

Q. And at the time that the defendant had asked you what this was all about, and you told him the other officers would be along, did the defendant ask permission of you to use the telephone?

A. No, he didn't.

Q. When you said there were going to be some other officers coming along, did the defendant ask you if he would have time to make a telephone call to an attorney?

A. No.

Q. How long were you in the room there, Officer Krueger?

A. Approximately forty-five minutes.

Q. During the forty-five minutes, what happened, other than what you have already told us?

A. The defendant asked if he could get dressed.

Q. All right, and you replied——

A. (Interrupting) We said yes, that he could, that we would get his clothes for him. So, he pointed out and described various articles of clothing, and my partner, Officer Jackson, obtained them for him, a suit and tie, and we let him pick out a shirt. I think he had some laundry there on a chair and his shoes and socks, and so we let him get fully dressed.

Then he asked for a glass of water, and we gave him a [fol. 432] glass of water, and he asked if he could smoke, and we allowed him to smoke, and then we just carried on a general conversation until the other officers arrived.

Q. As best you can recall, what was this general conversation about?

A. Well, there was some discussion about him being a law student. I noticed a few books in the little book shelf against the wall, and I think he said he had gone to Southwestern, and we said quite a few police officers had studied law, and it was just a general conversation.

Q. All right. Was there anything else in this conversa-

tion, in this forty-five minute period, that you can recall, in addition to what you have already told us about?

A. I can't recall anything.

Q. Well, what next happened? Who was the next person to come into the room?

A. Officers Gotch and Stambler arrived.

Q. Incidentally, what time was it, approximately, that you made your entry into the room?

A. Approximately 1:30 p.m.

Q. Do you remember what time it was that you received a call from Sgt. Gotch to go out and arrest the defendant?

A. Well, I didn't receive the call from Sgt. Gotch. My commander informed me that he had had a phone call from Gravante, and we were to proceed to this address.

[fol. 433] Q. Do you know about what time this conversation was, that you had been told to do this?

A. It was approximately ten minutes before we arrived.

Q. As a matter of fact, wasn't it just noon or shortly before when you got there?

A. No.

Q. I am just trying to refresh your recollection. Your best recollection is that it was 1:30, is that correct?

A. Yes.

Q. Did you make any notes at that time as to the time of the arrival?

A. Officer Jackson made notes.

Q. Do you have those notes with you?

A. No, I don't.

Q. Then shortly after Officers Gotch and Stambler arrived, you left, is that right?

A. Practically immediately.

Mr. Armstrong: I have nothing further of this witness?

Cross-examination.

By Mr: Alexander:

Q. Officer, as I understand it, 5128 Marathon is within the Hollywood D ision, is that right?

A. That is correct.

[fol. 434] Q. And is it correct to say that your instructions were to apprehend this defendant?

A. That is correct.

Q. You took no part in the investigation of this case whatsoever, did you?

A. None whatsoever.

Q. Your sole job in this matter was to arrest the defendant and hold him for the investigating officers?

A. That is correct.

Q. By the way, did you observe whether or not the defendant had any injuries on his person?

A. I observed some brownish places on his left hand, on the left fingers, the fingers of the left hand, that had the appearance of iodine. It was a brownish color, and some darker discolorations underneath, and I observed what appeared to be a scratch on the left side of his neck.

Q. That was there when you arrived, is that correct?

A. That is correct.

Q. Did you ask him when he had gotten up that day?

A. No, I did not.

Q. Did he say anything about having been asleep?

A. No, I don't recall any conversation regarding that.

Mr. Alexander: Nothing further.

Voir dire examination (continued).

By Mr. Armstrong:

Q. Do you recall whether his hair appeared to be combed [fol. 435] in the morning, or was he disheveled when you came in?

A. I recall him combing his hair after we had allowed him to dress.

Q. Did you observe materials on a desk there, envelopes and a check book and some other things?

A. I observed several envelopes, yes.

Q. And did the defendant appear to be in the midst of doing something with respect to these, doing something with respect to a check book and these envelopes at the time you came in?

A. He was standing in the center of the floor, nearer the desk, when *in* went into the apartment, and there were several envelopes on the desk.

Mr. Armstrong: I have nothing further of this witness. Thank you, Officer.

The Court: I believe Juror Richmond had a question.

Juror Richmond: After you placed the defendant under arrest, did you caution him that anything he might say could be used against him in a court of law?

The Witness: No, I did not.

The Court: That is all.

Mr. Armstrong: On that point, just one more question. Did your partner say something to that effect in your presence?

The Witness: Not that I heard, no.

Mr. Armstrong: Thank you.

[fol. 436] The Court: We will take the morning recess at this time. Do not discuss the case among yourselves, nor talk to anyone about it nor form any opinions or conclusions until the matter is finally submitted to you. We will take a ten minute recess at this time.

(Recess.)

Mr. Armstrong: Officer Jackson, please. For the record, we might stipulate that the jury are present and in their proper places.

Wayne L. Jackson, called as a witness on behalf of the defendant, being first duly sworn, was examined and testified as follows:

The Clerk: Be seated and state your name, please.

The Witness: Wayne L. Jackson.

Voir dire examination.

By Mr. Armstrong:

Q. What is your business or occupation, Mr. Jackson?

A. Police Officer for the City of Los Angeles.

Q. Assigned to what division?

A. Hollywood Division.

Q. Is that in the Hollywood Detective Division?

A. No, sir.

Q. Are you ordinarily a uniformed officer?

[fol. 437] A. Special detail, plain clothes officer.

Q. All right. Were you so assigned on July 5th of this year?

A. Temporarily attached to the Detective Bureau.

Q. And on July 5th you were temporarily attached to the Detective Bureau?

A. Yes.

Q. On July 5th did you have an occasion to see the defendant, John Crooker, on that day?

A. I did.

Q. Where was it that you saw him?

A. At 5128 Marathon. I believe the apartment was 105.

Q. At approximately what time of the day did you arrive at that apartment?

A. Approximately 1:30 p.m.

Q. And how did you make an entry into that apartment?

A. I entered with Sgt. Krueger. Sgt. Krueger obtained a key from the landlady, and I entered the door at the same time he did. He opened the door and entered the apartment.

Q. Did you draw your revolver as you entered the room?

A. Yes.

Q. When you came in the room, where was the defendant?

A. Standing in the middle of the living room, as best as I can recall.

[fol. 438] Q. How was he dressed?

A. He had a plaid bathrobe on and flannel pajamas.

Q. When you came into the room, what, if anything did you say?

A. I don't believe I said anything.

Q. What was said, then, by anyone?

A. Sgt. Krueger told him he was under arrest.

Q. Did he say he was under arrest for something, or did he just say he was under arrest?

A. He just said he was under arrest.

Q. What did the defendant do or say?

A. The defendant said nothing, and I was instructed by the Sergeant to handcuff him, which I did.

Q. Did you handcuff him to something or somebody?

A. No, sir. I handcuffed him with his hands behind his back.

Q. You handcuffed his hands behind his back, and what happened next?

A. We searched his person for weapons, and then we removed the handcuffs to let him dress.

Q. During that search did you discover any weapon that he had?

A. No, sir.

Q. What was the first thing that the defendant said, that you can recall?

A. I don't recall what the first thing he said was. I believe he said, "May I dress?"

[fol. 439] Q. Do you remember him saying at any time, "What is this all about?"

A. I believe at one time he said something as to, "What is this about?"

Q. And who replied to that?

A. Sgt. Krueger.

Q. Do you remember what he said?

A. I think he told him that there would be some officers along shortly to talk to him.

Q. He didn't say what the officers were going to talk to him about?

A. No, he didn't.

Q. Do you remember about the same time that the defendant asked you—asked what it was about, and Sgt. Krueger told him that the officers would be along, that the defendant asked if he would have time, in the interim, to make a telephone call?

A. No, I don't recall that.

Q. Do you remember the defendant saying something at that time about he wanted to call an attorney?

A. No, sir, I don't.

Q. Did Sgt. Krueger tell the defendant at that time that anything he would say would be used against him?

Mr. Alexander: That question is immaterial under the law of the State of California, and we are objecting to it.

The Court: The objection is sustained.

[fol. 440] By Mr. Armstrong:

Q. How long were you in the apartment house, Officer Jackson?

A. Approximately forty-five minutes.

Q. During the forty-five minutes, what happened besides the defendant getting dressed? What happened next?

A. Well, that took a little bit of time. I had to go to the

drawer and closet for each article he asked for, allowed him to dress, and then he sat down in the chair in the middle of the living room, and he asked me for cigarettes, and I went to the kitchen and got him a package of cigarettes.

Q. After he was dressed, you replaced the handcuffs on him?

A. Yes, sir, in front of him.

Q. Did you have a conversation with him from that point on after you had gotten him some cigarettes?

A. Yes, sir.

Q. What was the general nature of the conversation?

A. Most of it was about his going to law school. He told us he was going to Southwestern, and he mentioned that there were a lot of police officers going to that school out there, and mainly the topic of conversation was his schooling, and that was about the substance, as I can recall.

Mr. Armstrong: Thank you. Nothing further of this witness.

[fol. 441] Cross examination.

By Mr. Alexander:

Q. Officers Gotch and Stambler arrived sometime later on, did they not?

A. Yes.

Q. And when Gotch and Stambler arrived, you turned the defendant over to them, is that right?

A. I left the apartment.

Q. And you and Krueger left the apartment?

A. Immediately.

Q. And that was the end of your connection with the case?

A. Exactly.

Mr. Alexander: That is all, your Honor.

The Court: That is all.

Mr. Alexander: May he and Officer Krueger be excused?

Mr. Armstrong: Stipulate to that.

The Court: Yes, they may be excused.

(Witness excused.)

Mr. Armstrong: Officer Willis, please.

RAYMOND C. WILLIS, called as a witness by and on behalf of the Defendant, being first duly sworn, was examined and testified as follows:

The Clerk: Be seated and state your name, please.
The Witness: Raymond C. Willis.
[fol. 442] The Clerk: What was your first name?
The Witness: Raymond.
The Clerk: And the initial?
The Witness: C.
The Clerk: Spell your last name.
The Witness: W-i-l-l-i-s.

Voir dire examination.

By Mr. Armstrong:

Q. Mr. Willis, what is your business or occupation?
A. I am a polygraph technician for the Los Angeles County Sheriff's Department.
Q. Were you so employed on the 5th of July of this year?
A. No, sir.
Q. What was your occupation on the 5th of July of this year?
A. I was a police officer for the Los Angeles Police Department.
Q. Assigned to what department or division?
A. The Crime Lab., the polygraph section.
Q. You were doing for the Los Angeles Police Department approximately what you are now doing for the Sheriff's office, is that correct?
A. Yes, sir.
Q. And on July 5th, while you were so assigned, did you [fol. 443] have occasion to see this defendant?
A. Yes, sir.
Q. And approximately what time of the day or night was that?
A. I first saw the defendant about 5:30 in the evening, p.m.
Q. And where did you see him?
A. It was in the old Central Building, third floor, polygraph section.
Q. Was it in your polygraph room where you first saw him?

A. I believe it was out in the hallways surrounding the room, or between that and the photo section.

Q. On that occasion, who else was with the defendant?

A. If I remember correctly, I believe there was a Sgt. Stambler and Officer Gotch, Lt. Armstrong, and Inspector Kerr.

Q. And did you have a conversation with the defendant at that time?

A. Not that I remember, no, sir.

Q. When was the first time that you, yourself, either had a conversation with the defendant or were a partner to the conversation; that is, when the conversation was going on in your immediate presence?

A. I would say it was about an hour after he first arrived.

[fol. 444] Q. About 6:30, would that be?

A. Yes.

Q. Do you know where the defendant was between 5:30 and 6:30?

A. Well, I know that part of that time he was in the photo section.

[fol. 445] Q. All right, now, about 6:30 what happened there?

A. He was brought into the room and seated in the polygraph chair and asked if he wanted to take the polygraph examination.

Q. What did he reply?

A. Well, I cannot remember the exact words. He declined to take the polygraph directly. I don't believe there was any, to my knowledge, direct denial or refusal to take the test. At that time we went into the room and had a conversation on it.

Q. Who was present at this conversation in the Polygraph Room itself?

A. Just myself and the subject.

Q. How long were you two alone together?

A. I would say about an hour and a half.

Q. During that one and a half hours what was your general conversation about?

A. I was trying to explain the workings of the polygraph, the technique used. He told me of some of his scholastic background, studying some law and such. I remember that.

We discussed, a little bit, I believe, of his private life, about his marriage.

Q. Well, then, did you renew your request for him to take the examination?

A. Well that was what the entire conversation was for. [fol. 446] We were trying to establish what we call rapport, to explain to him there was no mystery about the detection technique and what it could do and what it couldn't do, and the techniques utilized.

Q. Did he tell you at that time that he didn't want to take the test until he had a chance to talk to an attorney?

A. I can't remember him ever stating that, no.

Q. Do you remember if he told you, when you were establishing this rapport with him, that he had no objection to the test but he would like to have an attorney with him at the time it was administered?

A. He was explaining more to me that he knew the polygraph was not valid for court use unless the attorneys stipulated, and we discussed that part. I don't remember him saying he wanted an attorney with him.

Q. I didn't get the last part.

A. I don't remember him stating he wanted an attorney, or an attorney with him to take the test.

Q. Officer, what is your best recollection of the — Strike that out.

The defendant never did take this test, is that right?

A. No, sir.

Q. What is your best recollection of the final reason that he gave for his not taking the test, after you spent all this [fol. 447] time with him?

A. Well, I asked him towards the end of the conversation, point blank, why he refused, after explaining the entire technique and such to him, after we discussed so lengthily, and he stated it was the self preservation complex, self protection complex.

Q. He didn't say at that time, when your final question was asked of him, he didn't say he wanted to have an attorney here present, or wanted to consult with an attorney first?

A. He was talking about an attorney, I believe that was a former instructor.

Q. Now, on that subject, when he was talking about an attorney who was a former instructor of his, what did he say about it?

A. Well, I can't remember exactly. I know there was something about a former instructor or a teacher of law of some type that he thought he would like to contact some place along there; whether that was at that time or just when he was leaving, I can't be sure.

Q. At the time that you had this conversation in which he referred to an attorney who had been a former teacher of his, was that while you were still alone with the defendant, or was that when other officers had come in the room?

A. That I can't be sure of; I don't remember exactly.

[fol. 448] Q. In any event, when he did mention in substance that he would like to contact this attorney who had been a former instructor of his, do you remember what you said at that time?

A. No, I don't remember. I imagine I stated it was his privilege.

Q. After he said this to you did you pass this information on to any of the other officers that had brought the defendant up there?

A. I don't remember whether that was discussed while we were alone or while we were with the other officers. I don't remember just what the relationship is.

Q. Well, all right. You say you talked to the defendant about an hour and a half alone—how long were the other officers present?

A. Well, I don't know. I was arranging to leave—probably ten or twenty minutes or twenty five minutes, I don't know.

Q. Which officers were present at that time?

A. Well, I believe there was an officer, or Sgt. Staubler; I believe Officer Gotch, Lt. Armstrong and Inspector Kerr were all still present.

Q. You don't recall whether these officers were present at the time you had this discussion about his former instruc-

[fol. 449] tor attorney?

A. No, I don't remember.

Q. After you talked with after all of you had talked together for a while—— Strike that out.

When all of you were there, do your remember what else was the subject of the conversation while you and Inspector Kerr and Lt. Armstrong and Sgt. Gotch and Officer Stambler were present, what the conversation was between those people and the defendant, or between yourself and the defendant at that time?

A. No, I can't remember.

Q. Anyway, that was just a few minutes?

A. That was not too long.

Q. Then did you remain with the defendant after that few minutes had elapsed?

A. No, I had to proceed to clean up the polygraph room after they left.

Q. Then did you see the defendant any more that evening or in the early hours of the next morning after what you have told us about?

A. No, sir.

Mr. Armstrong: That is all, thank you very much.

[fol. 450] Cross-examination

By Mr. Alexander

Q. Officer Willis, you said you explained to him the workings and techniques of the polygraph machine; tell us what you told him, please.

A. Well, we—I mean we pointed out the standard procedure——

The Court: No, tell what you told him at that time.

A. I can't remember verbatim. I know I explained to him the workings of the blood pressure and the cuff that fits on the arm, it records the blood pressure, pulse beat, the pneumograph tube that fits around your chest and measures breathing, and the respiration pattern, the galvanometer and the electrodes that fit on your fingers, and through galvanic skin response sweat gland reaction is recorded on graph paper, and all these various indices are recorded. That it took physical effort to lie. That we measured what we call the physical concomitants of emotion, the physical effort put forth to be able to lie. That to tell the truth would not take this effort in a normal person and therefore we

could run a clear pattern; and in a person trying to lie or deceive us, that would show a reaction from the physical effort he would have to put out.

The type of questions are worded in such a way that [fol. 451] they could be answered with a yes or no. That there would be no discussion during the actual time of the test, but anything we would like to clarify or discuss at any time could be done before or after he is tested.

Q. Did you tell him the advantages of a lie detector test or an innocent person?

A. I tried to explain that the true value of a lie detector test is an investigative tool or aid. That if there is nothing to hide, nothing to be afraid of, it can do nothing but help you to clarify the situation and the subject's part in the situation to the officer for further investigation.

Q. Did you tell this to the defendant?

A. Yes, sir.

Q. In giving this test, I take it you give the test, and purposely only you and the subject are permitted in that room, is that correct?

A. Yes, sir.

Q. No outsiders?

A. That's right.

Q. Now, you asked about the reason for his refusal to take the lie detector test. Isn't it a fact that he told you he would not take the test because he knows that the result of the test is not admissible in court?

A. Yes, he told me that. We discussed that.

[fol. 452] Q. Did he tell you further that he wouldn't take the test because of self-preservation is the first law of nature?

A. To the best of my remembrance—that he couldn't take it because of self-preservation complex.

Q. That is what he said to you?

A. To the best of my memory, yes.

Q. You said he told you about his marriage; do you mean by that he told you he was a married man?

A. Well, yes, he stated, he told me he was married.

Q. And he told you about his law and scholastic background. Do you mean by that that he told you he was studying law?

A. Yes.

Q. That he was a law student?

A. Yes, sir.

Q. And did he tell you how much law he had studied?

A. Well, he could have, I don't remember.

Q. And did he tell you that this professor of law had told him that the lie detector tests are not admissible in court, the results, rather?

A. I believe he stated one time that there had been a class where lie detection had come up, or a demonstration or some such thing that he had sat in, and this point came up in the [fol. 453] class.

Q. At any time during the time that the defendant was with you did you attempt to procure a confession from him?

A. Yes, at one time when I had given up on the lie detection test I asked him, I said, "Well, if you have nothing to hide," and so forth, "why not take the test?" I said, "Have you ever killed anyone?" And he didn't answer in any way.

Q. He just remained silent, is that what you mean?

A. Well, he switched to another subject, and we started to discuss something else, I forget exactly what it was, but we started to talk about something else.

Q. That question he left unanswered?

A. That's right.

Mr. Alexander: Nothing further.

Mr. Armstrong: Nothing further.

Mr. McCurdy: May this witness be excused?

The Court: Yes, you are excused.

(Witness excused.)

Mr. Armstrong: The defense will call the defendant to the stand for the purpose of voir dire only.

[fol. 454] JOHN RUSSELL CROOKER, JR., called as a witness in his own behalf, having been first duly sworn, was examined and testified as follows:

The Clerk: Be seated and state your name, please.

The Defendant: John Crooker.

Voir dire examination

By Mr. Armstrong:

Q. Mr. Crooker, what was your address on July 5, 1955?

A. 5128 Marathon Street, Los Angeles.

Q. Is that a house or an apartment, or what?

A. That is an apartment house.

Q. Did you have an apartment number there?

A. Yes, I did, 105.

Q. Directing your attention to July 5th of this year, were you in your apartment in the morning hours of that day?

A. Yes, I was.

Q. And on that occasion, on July 5th did you have any contact with any police officers?

A. Yes, I did.

Q. What was the initial contact that you had with the police officers on the day of July the 5th?

A. About 11:00 or 12:00 noon, I would say, I was seated in my chair in my apartment, and I heard a key in the door, [fol. 455] and two officers came through the door with drawn guns.

Q. You heard this noise of the key in the lock, and did you rise?

A. Yes, sir, I did.

Q. And the officers came into the apartment with their guns drawn; what did they say as they came in?

A. As I recall they did not say anything until I asked them what this was all about—yes, they did, too—they told me to raise my hands.

Q. What did you do?

A. I raised my hands.

Q. Go ahead, you say you asked them what it was about; what did they say?

A. They said it was serious.

Q. Did they say anything else?

A. They told me I was under arrest.

Q. All right, what else?

A. Well, at that point, I thought they were going to take me from my apartment——

Mr. Alexander: I ask that that be stricken out.

The Witness: Excuse me.

The Court: That may be stricken out.

By Mr. Armstrong:

Q. What did you next say to them and what did they next say to you?

A. I asked the officers if I could dress.

[fol. 456] Q. All right; did they grant you that permission?

A. Yes, they did.

Q. When you referred to the officer, are you talking about Officers Jackson and Kreuger, the last two officers who testified before Mr. Willis?

A. Yes, I am. I didn't know their names at the time, but I do know their names now.

Q. Yes; at any rate those were the two officers who came into the apartment you are telling us about?

A. Yes.

Q. You asked them if you could dress, and you were allowed to dress?

A. Yes.

Q. After you had dressed what was next said, as best you recall, by either you or the officers?

A. The officers told me that—when I asked them again what this was about, they didn't reply. I asked them if I would have time to call an attorney.

Q. And they said what?

A. They said that I would have time.

Q. Did you go to the telephone and make the call?

A. No, I did not. They had seated me in a chair in the opposite end of the room.

Q. All right. Well, then, what next happened? You were dressed now, and you were seated in a chair in the room of your apartment.

[fol. 457] A. The officers sat approximately in the middle of the room and talked with me about whether or not I went to law school. I told them that I had.

Q. Was there any discussion with the officers that you recall?

A. There was very little conversation between us.

Q. Approximately how long were the officers in the room with you before anybody else came in the room?

A. I would say approximately twenty or thirty minutes. It was not a long period of time.

Q. Then who were the next people who came into the room?

A. Officer Gotch.

Q. You are referring to Sgt. Gotch seated here?

A. Yes.

Q. Was he alone or was he with someone?

A. It is my best recollection he came in the door first alone, that is; but that Officer Stambler was there shortly thereafter.

Q. Then when Officer Stambler and Sgt. Gotch came into the room did these other officers leave shortly after the ones who had been there first?

A. Yes, they did.

Q. Then when Sgt. Gotch came into the room did he speak to you or say anything about what was happening, or anything of that sort?

[fol. 458] A. May I correct my answer to that question with regard to the officers?

Q. Yes.

A. It is my recollection they didn't leave until Officer Gotch was accompanied by Mr. Stambler. They were there for a short period of time while Officer Gotch made a phone call.

Q. All right. Then, in any event, what was said between Sgt. Gotch and yourself?

A. I asked Officer Gotch what this was all about and if I could call an attorney, and Officer Gotch asked me if he could go ahead and search my apartment.

Q. Let's not demote this poor sergeant, he worked hard for those things.

A. I am sorry.

Q. He asked you if he could search the apartment?

A. Yes.

Q. You replied what?

A. I told him that I would prefer that he obtain a warrant to search my apartment.

Q. To which he replied what?

A. He said he really didn't need one and he told me, "You are going to go that route—" that is was all right with him. And at that time he made his phone call downtown.

Q. All right. Now, you said that prior to that you had [fol. 459] asked him about an attorney, prior to the phone call?

A. Yes.

Q. What did you say, as best you can remember?

A. I asked him if I could call an attorney, if I could talk with an attorney.

[fol. 460] Q. What did he say?

A. Well, Mr. Armstrong, he didn't answer my question. He referred—about the question with respect to the attorney, at the same time that I preferred that he get a warrant to search my apartment, and he ignored the attorney question and told me—referred to my asking about the attorney and about the warrant by saying, "O.K., if you are going to go that route."

Q. He used the telephone in your apartment, is that right?

A. Yes.

Q. What next happened?

A. Mr. Gotch—Officer Gotch, excuse me, wasn't able to get a man downtown whose name, I believe, was Brown, and he had to spend a period of time just sitting there.

Q. All right, then did a call come into your apartment? Did your phone ring?

A. No; Officer Gotch called back again.

Q. And then after the second call, what next happened?

A. During the interim, before the second call, Sgt. Gotch had a telephone call—made a telephone call and talked with a man. Sgt Gotch said, "Where does he work?" And he said, "Sana Tob", and "What is that?", and he said, "How is he acting?", and he said, "All right, just let him ramble."

Q. You, of course, couldn't hear what was going on at [fol. 461] the other end of the wire?

A. No.

Q. Then after this telephone conversation, what next happened?

A. About this time the men who have been referred to as the Crime Laboratory men, came to my apartment, and I think before Sgt. Gotch was able to reach whomever he was calling down town, there were several officers at that time who came into my apartment.

Q. These officers that came in, were they identified to you?

A. No. In fact, none of these officers were identified to me, that I recall. I did not learn their names until I was in the Los Angeles County Jail.

Q. Then several people came into your apartment, at least. Now, did you recognize some of these people that came into your apartment as people who have been testi-

fying here yesterday and today; specifically, did you recognize Lt. Armstrong as being one of the men?

A. I am trying to recall exactly when Lt. Armstrong came in my apartment, whether he came at that time or just previous to it. I cannot recall exactly.

Q. But, anyway, Lt. Armstrong did come into your apartment, too?

A. Yes, he did.

Q. You told us that you asked Sgt. Gotch if you could call [fol. 462] an attorney about the same time you were discussing the search warrant.

Did that subject get broached again while you were in the apartment?

A. Yes.

Q. To whom?

A. To Lt. Armstrong.

Q. What did you say to him?

A. If I might go back just a little bit. Sgt. Gotch asked me questions concerning my whereabouts on July 4th, and I had answered those questions. Then when Lt. Armstrong came to my apartment and began to ask me the same questions, I told Lt. Armstrong that I had asked to talk with an attorney before I answered the officer's questions.

Q. What did Lt. Armstrong reply to that?

A. I have no recollection of how he passed that off. He did not give me an answer that I recall.

Mr. Alexander: I will ask that that part, "I have no recollection of how he passed that off", be stricken.

The Court: That is stricken.

By Mr. Armstrong:

Q. Anyway, he made no direct answer to your request?

A. That is correct.

Q. What next happened then? After you had this conversation with Lt. Armstrong, did he continue to ask you these questions?

[fol. 463] A. Yes, he did.

Q. Did you renew your request?

A. Concerning the attorney?

Q. Yes.

A. No, I did not, Mr. Armstrong, at that point. I had

asked him, you recall. I did ask him for an attorney, and I did not repeat it at that time.

Q. Then after he had asked you questions again about your whereabouts, what next happened?

A. At one point, in the vicinity of time of his questioning, one of the men, who I presume to have been from the laboratory, had a black bag, at least, and took it to my kitchen, set it on the table, and had a white piece of paper on the kitchen table, and took me from my chair in the living room to the kitchen and held my hands out before him in this manner (indicating) momentarily, looking at them, then left the kitchen, talked with other officers, and I was returned to the living room.

Q. Then what was the next thing that happened?

A. Sgt. Gotch had reached whomever he was trying to reach by telephone, and had—this was previous to this time, Mr. Armstrong, that he had reached this man, because before——

Mr. Alexander: (Interrupting) I will ask that this be stricken as a conclusion of the witness.

By Mr. Armstrong:

Q. Yes, I will stipulate that may be stricken. If you will [fol. 464] confine your testimony to the things that you personally observed, and try to avoid anything that you concluded from actions of someone else.

Just tell us what you saw, and heard, and observed yourself, and not what you figured was behind what was going on.

A. Sgt. Gotch——

Mr. Alexander: (Interrupting) Is there a question pending?

The Court: I don't believe there is a question pending.

By Mr. Armstrong:

Q. The question was, what was the next thing that had happened. If we can go back. You described being taken into the kitchen, and you say before that Sgt. Gotch had had a telephone call. Let it go at that.

And what next happened?

A. Sgt. Gotch told me that I was under arrest for suspicion of murder.

Q. Was this the first that anyone had told you that the reason for officers being in your apartment for all these proceedings was a suspicion of murder?

A. Yes.

Q. All right.

A. May I say that we are out of sequence of time at this point?

Q. When was it approximately at the time that Sgt. Gotch [fol. 465] told you that you were under suspicion of murder?

A. Before Lt. Armstrong came into my apartment.

Q. Then proceed from there. What was the next thing in sequence of time that you have not already testified about?

A. Sgt. Gotch was seated on my divan when Lt. Armstrong came in, and he told Lt. Armstrong that he had told me that I was under arrest on suspicion of murder, and that I had taken it like a little man.

Q. Then what did they proceed to do from that point on?

A. Sgt. Gotch had made—completed his telephone call, and told the other officers in the room to proceed with a search of my apartment.

Q. All right. While this search was going on, what were they searching?

A. They searched my kitchen. They searched my living room. They searched my dressing room, and they searched my bath.

Q. While this was going on, you were seated in the room, is that right?

A. Yes, I was.

Q. Were you handcuffed at this time?

A. Yes, I was.

Q. Then after the search was completed, what next [fol. 466] happened?

A. Sgt. Gotch had asked me if I owned an automobile. I told him yes. He wanted to know where the car was, and I told him—described its location to him.

He asked me where the keys to that car were. I told him, and to my best recollection he took the keys and was accompanied by two or three other officers and left the apartment at that time.

Q. But you didn't go with him?

A. That is correct.

Q. So you just saw them leave with your keys. Then what next happened?

A. You understand that the search is in process at this time, of my apartment?

Q. Yes, that's right. After the search was completed, was there any more conversation before you left your apartment?

A. After it was completed?

Q. Yes, after the search was completed, was there any more conversation with any of the officers that have been mentioned before the left your apartment?

A. Officer Stambler had pointed out this photograph of Norma and of me.

Q. By "Norma" you are referring to Norma McCauley?

A. Yes, and asked me who that was.

Q. And did you tell him?

[fol. 467] A. I said that that was a friend of mine.

Q. This picture that Officer Stambler pointed to, was that this picture (showing same to witness)?

A. (Examining same) Yes.

Mr. Armstrong: I will ask that this be marked Defendant's Exhibit B for identification, if the Court please.

The Court: It will be marked Defendant's Exhibit B for identification.

By Mr. Armstrong:

Q. All right. Was that subject pursued, by the way? You said you replied to Officer Stambler that that was a friend of yours, and was there anything else said on that subject?

A. No, sir.

Q. All right. Was there any other conversation that you recall before you left your apartment?

A. Sgt. Gotch was searching my desk, and he had a piece of paper in his hand folded in the form of a letter, which he referred to as a poem entitled "Consummation."

Sgt. Gotch asked me when I had written that. I replied that I didn't know exactly, but that it had been written some time ago. Sgt. Gotch asked me if I was a poet, and I told him no.

Q. All right, was there any other conversation that you recall before you left your apartment?

A. One of the officers asked me if I always wore two-pants [fol. 468] suits, to which I replied, "Yes, usually."

Q. This is one of the officers that was engaged in searching your apartment at the time?

A. Yes, sir.

Q. Anything else that was said before you left your apartment?

A. One of the officers asked me what the burned paper was in my kitchen waste-paper basket.

Q. What did you tell him?

A. To which I replied I didn't know exactly.

Q. Was the district attorney, Alexander, present in your apartment at any time?

A. Yes.

Q. Was he identified to you as such at that time?

A. No.

Q. Were you told he was a police officer, or were you told anything at all about him?

A. I wasn't introduced to any of these officers, to my recollection, Mr. Armstrong. I didn't know who any of them were, or what their capacity was.

Q. Was there any further conversation after you said one of the officers asked you what some burned paper was. Any other conversation that you recall?

A. I had asked Sgt. Gotch and Lt. Armstrong more than once in my apartment the exact sequence I cannot recall, what this was all about.

[fol. 469] When Sgt. Gotch first told me that I was under arrest, he said, "for a felony".

I asked him, "What felony?"

Then he told me, "A suspicion of murder."

I asked him, "Of whom?"

Q. What did he reply to that?

A. To which he did not reply. He did not reply.

Q. I see. All right. Now, what time did you finally leave you apartment that afternoon?

A. It is my best recollection that it was about 4:30.

Q. In the afternoon?

A. Yes.

Q. Then from there you proceeded where?

A. To the Central Station.

Q. That is in downtown Los Angeles?

A. Yes.

Q. In the vicinity of the Civic Center?

A. Yes.

Q. And when you got to that area, who did you next see? Where were you next taken?

A. I was taken to Studio A. There was a big "Studio A" printed on the doorway.

Q. What happened there?

A. I was told to take off my clothes, and then told to go over to some photography equipment where pictures were taken of me by direction of, I believe, Officer Stambler.

[fol. 470] The highest ranking officer, whatever his rank is, was at this time in the hallway.

A Times newspaper photographer was in that room at that time.

Q. You said they had you take off your clothes. Were you stripped at the time the pictures were taken?

A. They had *be* stripped, yes.

Q. You say it is your recollection that Officer Stambler was present during this procedure?

A. Yes.

Q. Then after they had finished taking pictures, where did you next go?

A. Officer Stambler, I believe, told me to dress. I was seated in the chair in what would be the approximate middle of that room, that studio A. Actually, it would be nearer the doorway, and I sat there for something approximating half an hour, during which time Lt. Armstrong came in.

Lt. Armstrong asked me what I thought about all of this that had happened. I told Lt. Armstrong that I didn't know what had happened, but that I did realize that regardless of what had happened, that as it respected me personally, that I had been hurt a great deal already through the manner of allowing the press to take the pictures that they had taken of me; through the attitude of the police, that I was evidently connected with whatever had happened through [fol. 471] my association with my college, through my interest in taking the bar examination. I realized that this would hurt those plans of mine a great deal.

Q. These are the things you said to Lt. Armstrong?

A. Yes.

Q. What did he reply to all of this?

A. He told me that he realized that was the case. I told him that I thought that if they thought that I was involved in something and would allow me to have an attorney, that I would be very willing, very anxious to talk to them about whatever had happened.

The Court: We will take the noon recess at this time.

Do not discuss the case among yourselves nor talk to anyone about it nor form any opinions nor conclusions until the matter is finally submitted to you.

We will take up again at 2:00 o'clock.

(Whereupon, at 12:05 p.m., this day, a recess was taken until 2:00 o'clock this day.)

[fol. 472] Santa Monica, California—Tuesday, November 22, 1955

2:00 O'Clock P.M.

The Court: Let the record show the jury is present. Resume the stand, Mr. Crooker.

JOHN RUSSELL CROOKER, JR., having been previously sworn, resumed the stand for further examination, as follows:

Voir dire examination (Continued)

By Mr. Armstrong:

Q. Mr. Crooker, before the noon recess you had told us that while the officers were still at your home that some one of the officers or some of the officers had asked you for your car keys, and then had left your apartment?

A. Yes.

Q. When they came back to the apartment, did those officers again come into your apartment?

A. Yes.

Q. About how long after they had gone out with the car keys in their hand?

A. I would say approximately half an hour.

Q. And when they came back into the apartment were they carrying anything?

A. Yes, they were.

[fol. 473] Q. What were they carrying?

A. A brown manila envelope of letters and notes written to me by Norma McCauley.

Q. When was the last time you had seen that envelope?

Mr. Alexander: Just a moment, that last is a conclusion, if the Court please; they were carrying a brown, manila envelope—after that is a conclusion.

The Court: Yes, the latter part of the answer may be stricken out. Did anyone say anything to you about what the envelope contained?

The Witness: No, sir.

By Mr. Armstrong:

Q. Did you recognize this particular envelope they were carrying?

A. Yes.

Q. And the last time you had seen this brown, manila envelope, where had it been—that is, the last time before you saw it in the possession of the officers?

A. In the glove compartment of my car.

Q. To go to where we were before the recess, you told us you were in the Central Police Station and that there you had been photographed, is that right?

A. Yes.

Q. And then after that you said that you had been undressed and photographed and you put on your clothes again and you were photographed some more, is that right?

A. No, they took all of the photographs, as I recall, with-

[fol. 474] out clothing.

Q. I see. Then you were allowed to put your clothes on again, and I believe you told us last about the conversation you had with Lt. Armstrong?

A. Yes.

Q. After that conversation which you already testified about with Lt. Armstrong, what was the next thing that happened?

A. I believe that just before that Sgt. Gotch and another officer were leaving, and they were going out of the hallway, out of the door into which we had just came, and Lt. Armstrong asked me if I wanted something to eat. I told him yes. They asked me generally what kind of sandwich I would want, and I said, "hamburger would be all right," what I wanted to drink, and I said, "milk would be all right." And it was following that that I was questioned again by Lt. Armstrong.

Q. Then Sgt. Gotch and Officer Stambler left, and you had a conversation that you told us about with Lt. Armstrong. What was the next thing that happened?

A. Lt. Armstrong took me across the hall to the polygraph room.

Q. When you got to the polygraph room, who was there?

A. Mr. Willis.

Q. Who else?

A. As I recall, he was the only one there.

[fol. 475] Q. He was the only one there: then you were shown in the polygraph room at that time?

A. I beg your pardon?

Q. He was the only one there when you were shown in the polygraph room by Lt. Armstrong?

A. Yes.

Q. Then he didn't stay?

A. No, he did not.

Q. Then you were alone with Mr. Willis?

A. Yes.

Q. Officer Willis, how long, approximately, were you with him?

A. I was with him, alone, approximately 20 or 30 minutes, or something of that nature.

Q. During this 20 or 30 minute period you were alone with him, did you have a conversation?

A. Yes.

Q. Would you give us the substance of that conversation that you had with Mr. Willis?

[fol. 476] Mr. Willis attached some material around my

chest, a band of some sort around my chest, and said that he was going to give me a lie detector test. I told him—I asked him if he would mind my telling him, before he started, that I would prefer having an attorney with me in taking that test. Mr. Willis asked me why, and I said that I didn't know very much about the polygraph machine, that I didn't know too much about taking this test, or what its import would be, and that I still did not know what had happened, why I was in the hands of the police, and that because I didn't know those two things, I felt I should have an attorney with me.

Q. Did you make the statement to him that your primary reason for declining the lie detector test was a self-preservation complex?

A. Certainly not.

Q. You didn't make any such statement to him?

A. No, I did not.

Q. Then what else was said in the conversation between yourself and Officer Willis, if you know?

A. Mr. Willis talked to me about the polygraph machine. He said that at best it was a negative test, that I shouldn't have any reason for not taking the test if I had nothing to hide.

He asked me what I had to hide, that I would not take the test. I tried to make him understand. I told him that [fol. 477] I told Sgt. Gotch and Lt. Armstrong that I had no objection to talking with them about whatever they had to talk about, but that I wanted counsel with me, that I wanted to talk with an attorney. I wanted an attorney with me before I would talk with them.

Q. At this point, did you mention Ray Simpson?

A. Yes, I did.

Q. And what was Ray Simpson to you? Where had you known him before?

A. He did some part-time instructing at Pepperdine College when I attended there, and I had taken one class from Mr. Simpson, I believe a class in U. S. History.

Q. Did you ever have a law course from him?

A. No, I did not.

Q. Mr. Simpson is, in fact, a practicing attorney, to your knowledge?

A. Has been for some years.

Q. But the course you took was United States Government or United States History?

A. Yes, I believe a history course.

Q. Was there anything further that was said with Mr. Willis beyond what you have already told us, his explanation to you of the polygraph and what you have indicated?

A. That was the conversation that we had. It was of that nature.

[fol. 478] Q. You say that conversation lasted for about twenty or thirty minutes?

A. Approximately, I would say.

Q. Did anyone else come into that room, or did you leave that room? What is the next thing that happened?

A. When Mr. Willis became—I won't say—that is a conclusion. After I finished that conversation, Mr. Willis went out and brought back Lt. Armstrong.

Q. And then Lt. Armstrong and Mr. Willis and you were in the room, is that right?

A. Yes.

Q. No one else?

A. No.

Q. Then you had a conversation at that time?

A. Yes. Very briefly Lt. Armstrong again prevailed upon me to take this test, the polygraph test.

Q. And what did you say to Lt. Armstrong on the subject?

A. I told him that I had told him my position, that I didn't mind taking the test, but that I wanted counsel with me when I took it.

Q. Do you remember if you referred to it that way, if you wanted counsel with you, or an attorney?

A. No, I asked for an attorney, Mr. Armstrong. Those are not my exact words.

[fol. 479] Q. I am asking you to search your recollection for your exact words, if you can.

When you were speaking with Lt. Armstrong after you talked with Mr. Willis, do you remember whether or not you said to him that you were willing to take the test but you wanted counsel, or did you say you were willing to take the test but you wanted an attorney with you?

A. I wanted an attorney with me.

Q. That is your recollection of the phrasing you used, the expression?

A. Yes.

Q. Was there anything else material said in this conversation, anything else that strikes you, that you can recall at this time?

A. No.

Q. Who else came into the room, or did you go out of the room?

A. I stayed there. Sgt. Gotch came in. The other officer, I don't recall his name——

Q. Stambler?

A. Stambler. —those four officers were in the room.

Q. Those four, to be sure, were Lt. Armstrong, Sgt. Gotch, Officer Stambler, and Officer Willis?

A. Yes.

[fol. 480] And yourself?

A. Yes.

Q. And how long did the four of you stay in the room together, or the five of you stay in the room together?

A. Well, I would again approximate it. I didn't have a watch, but I presume it to have been fully two hours, fully two hours, if not two hours and a half.

Q. Did Mr. Willis stay in the room all the time, or did he leave?

A. No, he left during part of that interrogation, and also Lt. Armstrong was doing part of that interrogation.

Q. What was the general nature of this interrogation that went on in what you estimate to be this two-hour period?

A. Sgt. Gotch asked me if I knew Norma McCauley. I said yes. I told him that I had worked for her. Lt. Armstrong asked me if I was in love with Norma, and I said no. May I correct myself? I think I said no. If I did not say no, I declined to answer that.

Q. Pardon me just a moment. Up to this time had you told any of the officers, Stambler, Gotch, Armstrong, Kerr, Hooper, or Willis, the true facts of the relationship that you had had with Norma McCauley?

Mr. Alexander: Just a moment. That is calling for a conclusion if the Court please.

[fol. 481] The Court: Objection sustained.

By Mr. Armstrong:

Q. Up to this point of time, had you explained—— Strike that.

Up to this time, had you told the officers just mentioned the relationship with Norma McCauley which you had had over the past several months?

A. No.

Q. All right. Now, as far as the questions and answers that went on during this period, if you will continue, after you said Lt. Armstrong asked you if you were in love with her, and you replied in the negative or declined to answer.

A. I had told Sgt. Gotch that I had worked for Norma McCauley, and Sgt. Gotch asked me questions pertaining to that employment, asked me how much I had been paid in that employment.

Do you want my answers?

Q. Yes.

A. I told him that I didn't recall exactly, that the stipend that I had been paid was fluctuated, that there was no arbitrary time of payment or amount of payment, that it changed several times.

He asked me had she ever given me money, and I told Sgt. Gotch that she had been interested in my schooling, and that from time to time she had helped me in that regard.

[fol. 482] He asked me specifically if she had given me $300 recently. I told him that recently she had helped me financially, but I wasn't sure of the amount of money that she had given me at that time.

Lt. Armstrong interjected some questions pertaining to my relationship with Norma, and my best recollection is that I declined to answer them. They were personal. They involved——

Mr. Alexander: (Interrupting) I ask that this be stricken as a conclusion.

The Court: That last part of the sentence may be stricken as being a conclusion.

[fol. 483] Q. When you declined to answer these questions, was anything said at that time about an attorney?

A. No.

Q. All right, go ahead, then. You said you were asked some questions which you declined to answer; go ahead from then on.

A. I believe that about that time in the questioning that Lt. Armstrong left about that time, and I am not sure about Mr. Willis. At any rate, Sgt. Gotch said—(what kind of language do you want me to use?)

Q. Well, I would like you to say what was said, as closely as you can recall.

A. He said, "Now, look, we have listened to your—b.s.—long enough. Now I am going to tell you what I think."

Q. What did he say from then on?

A. "I think that you have been shaking this woman down. You are in love with her——" now, wait a minute, just before that he said, right after he said, "We have listened to your 'words' enough, now I am going to tell you something." He said, "Norma McCauley is dead." And he said, "I think you killed her." He said, "You had been shaking her down for money and you went out there and stabbed her and strangled her to death." That is about the gist of his conversation.

Q. Keep your voice up.

[fol. 484] A. That is about the gist of what he said.

Q. All right, Then after that conversation where did you next go?

A. Where did I next go?

Q. Was there further conversation while you were still in Central?

A. Yes.

Q. Just tell me now the substance of what else was said and by whom.

A. I didn't say anything in response to what Sgt. Gotch had said. And Officer Stambler, at my lack of response, used language that I don't think we need to repeat. It was obscene. It was profane—telling me that I had no feeling about the matter and that I (repeated what Sgt. Gotch had said that I had done——)

Mr. Alexander: I wonder if we may have this conversation instead of repeating what Sgt. Gotch said he had done?

Mr. Armstrong: Did you say, "I repeated", or "he repeated"?

A. No, that Officer Stambler repeated what Sgt. Gotch had said about stabbing and strangling Norma.

Q. Did they mention at that time stabbing and strangling?

A. Yes, they did.

Q. After these words from Officer Stambler, what did you say?

[fol. 485] A. I said that for these officers to say that I was shaking Norma down, exhorting money from her, showed me that they didn't care anything about what I actually had or had not done. That I certainly had never done anything of that sort. And I described generally what my financial relationship was with her; that she was interested in my schooling. That what moneys she had given to me were in that regard. That they hadn't believed that; and they wouldn't believe my denials of killing her. I told them that I had asked them, since they came into my apartment, for an attorney, and I would rather not answer any more questions until I could have an attorney with me.

Q. You said that to Officer Stambler?

A. To Officer Stambler.

Q. As well as to Sgt. Gotch?

A. Yes.

Q. All right, then, what next happened?

A. Sgt. Gotch asked me questions pertaining to a knife, asked me whether I had one, at which time I told him about some Navy knives that I had had two or three years ago that I had used at college when I painted there in my work, but I didn't even know where they were. That is about the extent of the questioning.

And at that point, Sgt. Gotch and Stambler left, and I was in the polygraph room alone, and they brought me the sandwich and milk at that time.

[fol. 486] Q. This sandwich was what kind of sandwich?

A. Hamburg.

Q. What was its condition at that time?

A. What was its what?

Q. Its condition.

A. It was cold.

Q. Did you eat any of this hamburger?

A. I tried to take one bite of it. I didn't eat any of it, no.

Q. Did you drink the milk?

A. Yes.

Q. After you had finished this milk, what next happened to you?

A. They took me out of that room and around the hall; I don't know just what the section or place would be, and we stood there for a moment, don't know what for; and then they took me out to the car and took me to West Los Angeles.

Q. When you got to West Los Angeles, do you know approximately what time it was, by the time you arrived at West Los Angeles?

A. Mr. Armstrong, may I go back just a moment?

Q. Yes; is this something else that was said while you were at Central?

A. Yes, it is.

Q. All right.

[fol. 487] A. After this conversation that I had, after these questions by Sgt. Goteh and Stambler, and after the language that they had used, I had a conversation with Lt. Armstrong.

I asked Lt. Armstrong if the officers were going to use force to make me answer their questions before I could have an attorney with me. Lt. Armstrong said, "This is a free country."

I said, "I know that." Then I asked him again, was he going to use force to make me answer all questions.

He said, "You don't have to say anything that you don't want to." That is the extent of that conversation at that time.

[fol. 488] Q. And then you left there and you went to West Los Angeles. Do you know approximately what time it was you arrived at the West Los Angeles station?

A. Only by relation to other time. I would say it was something in the neighborhood of 10:30.

Q. When you got to West Los Angeles with whom did you speak, and where were you taken?

A. I was taken upstairs, and Officer Stambler was with me at that time. Officer Stambler had some papers, little eight by ten stacks, little stack of papers there at the desk which he went through. That was just maybe three or four minutes. Then Mr. Gravante came in.

Q. This was the first time you had seen Mr. Gravante?
A. Yes, it was.
Q. All right.
A. Officer Stambler went out and Mr. Gravante introduced himself. Said he was Mr. Gravante, and that he was going to be talking with me a great deal from there on. I said that I would like to tell him, as I had told the other officers, that I had asked for an attorney since the officers came to my apartment, and that I would like to tell him that I would like to have an attorney with me, and that I would not like to answer questions until I had that attorney. We didn't have [fol. 489] any further conversation right then. I believe it was Sgt. Gotch who came and got me and took me to what I now understand is Lt. Armstrong's office.

Q. When you got into Lt. Armstrong's office who was there?

A. Lt. Armstrong's office—the officer who I now understand is Sgt. Hooper. The door to what I understand was the outer office was opened at this time, and I believe Mr. Gotch—Sgt. Gotch, excuse me—was in that doorway, and the highest ranking officer—what is he?

Q. Inspector?
A. Inspector was at the side of the desk with another pad.
Q. That was Inspector Kerr that testified here?
A. Yes.
Q. He is the one referred to as the highest ranking officer?
A. Yes.

Q. What happened then after you got in there and the people were there that you described?

A. Lt. Armstrong started the questioning and asked me again what I had done the day before, where I had gone, and that trend of questioning. Sgt. Hooper interjected questions and wanted to know if I was married, how I had treated my wife, what my relationship was with Norma [fol. 490] McCauley. Did I own a knife? Had I killed Norma McCauley? Had I stabbed her? Had I strangled her? Did I have any keys to her home? Did I know anything about any keys belonging to her?

I believe it was at this point, it could have been when Sgt. Gotch was telling me that Norma had been killed, that he told me that Kirk had gone in and found Mrs. McCauley.

Q. By Kirk you are referring to the child, Kirk McCauley?
A. Yes.

Mr. Alexander: If the Court please, I did not hear the last part of that answer, may I have the last part of the answer read?

The Court: Read the last few sentences.

(Whereupon the reporter read the record as follows:

"I believe it was at this point, it could have been when Sgt. Gotch was telling me that Norma had been killed, that he told me that Kirk had gone in and found Mrs. McCauley.")

A. That he told me that Kirk had gone into the room and found Norma dead, and Norma dead; and that they, the officers, when they had gotten there had found one of his little cars on the chaise lounge in front of her body.

By Mr. Armstrong:

Q. What was the next thing that was said in this con- [fol. 491] versation in Lt. Armstrong's office?
A. Mr. Armstrong, when they were asking me these questions pertaining to Norma I didn't answer them, and I told them that I did not want to answer them until I could talk with an attorney. When they asked me questions about myself I answered them.

Mr. Alexander: There is no question pending, if the Court please.

The Witness: Excuse me.

By Mr. Armstrong:

Q. Then, after the questions, some of which you had not answered and some of which you had, what was the next thing that happened in Lt. Armstrong's office?
A. Gradually Mr.—Sgt. Hooper took over the questioning and he asked me what was I trying to do? Was I trying to refuse to answer on the grounds that it might incriminate me?
Q. What did you reply to that?
A. I said no. I said that those were his words, that I had not used them, that what I would like to have and what I told the officers from the beginning, is that I would like to have an attorney before I answered their questions.

Q. Then what next happened?

A. Bear in mind that——

Q. (Interrupting) Try to answer the next thing that hap-
[fol. 492] pened, if you can.

A. Well, at some point they brought me a cup of coffee.

Q. Well, while this questioning was going on they did bring you some coffee?

A. That's right.

Q. Then what was the next thing that happened, as far as conversation went?

A. I believe that Lt. Armstrong got up from his desk chair, the leather chair as shown in the picture, and went toward the outer door. Sgt. Hooper took his chair. I was at the end of the desk at this time. Sgt. Hooper had taken over the questioning, and was questioning me, and jumped up from his chair over to my chair and banged his hand down on my knee. When he did so, I turned to Lt. Armstrong and said, "There, you see," and Lt. Armstrong said, "What do you mean?"

And I said, "They are going to use force to make me answer their questions before I have an attorney."

Lt. Armstrong didn't say anything and turned around and walked out to the outer office. At this point Sgt. Hooper said—— Do you want me to use the language?

Q. Well, except for obscene terms, use it as closely as you can?

A. Well, in general he said, "Look, you son-of-a-bitch. I have been in this work for sixteen years, and I am not
[fol. 493] going to let someone like you come in here and tell me he is not going to answer questions. You are going to tell us what we want to know, and you are going to tell us now," and with that he hit me with his fist in my stomach. I didn't say anything. I went up like this (indicating).

Q. I am sorry. You did what?

A. I was sitting like this (indicating), I believe with my legs crossed. I went up like this (indicating), and he said, "Did you hear me?" And he hit me again in the stomach, and I said, "Yes, I heard you," and he said, "Well, then, answer me when I ask you something, say something to you."

He said, "You are going to give me the answers that I

want or I am going to take you out there and work on you like that for the rest of the night."

Q. What was next said by anyone?

A. I don't know if Mr. Gravante was in the room at that time, but I do know that Sgt. Hooper had no sooner done that to me than Mr. Gravante was beside my chair and told me that Sgt. Hooper meant exactly what he said.

I asked Mr. Gravante what he wanted me to say and what I had to say to make them leave me alone. Mr. Gravante said that he wanted me to tell them what had happened. I told him I didn't know. He said, "Well, I think you do know. I think that you killed Norma."

[fol. 494] I told Mr. Gravante that I would say anything they wanted me to say if they would leave me alone.

Q. Then at this point did you write any sort of statement?

A. I had a little more conversation with Mr. Gravante about it. I tried to get him to tell me what he wanted me to say, and he said he would get a paper and pencil and I could write it down, and I did begin to write.

Q. Now, I will show you what has been marked People's Exhibit 18 for identification, and ask you if you recognize it as being several sheets of yellow paper written upon in red ink (showing same to witness)?

A. (Examining same) With the exception of the blue initials in the corner, I recognize it.

Q. And is this the statement that you wrote out at the time and place that you have just told us about?

A. Yes.

Q. All right. After you had completed writing this statement, what next happened?

A. Mr. Gravante, and I believe Sgt. Gotch, and I believe Sgt. Hooper—it could have been Lt. Armstrong—took me out to a car.

Q. All right. You got in the car?

A. Yes.

Q. Did you go some place that you recognized?

[fol. 495] A. Yes.

Q. What was your destination? Where did you arrive?

A. I arrived at 1100 Somera Road.

Q. 1100 Somera Road being what place, whose home?

A. Norma's home.

Q. All right. Now, directing your attention to this dia-

gram that is on the board that has been marked People's Exhibit 9 in evidence, do you recognize this as being a representative drawing——

The Court: (Interrupting) Pull it out a little bit.

By Mr. Armstrong:

Q. Surely. Now, do you recognize this as being a representative sketch or plan of Norma McCauley's home?

A. Yes.

Q. And are you oriented on this?

A. Yes.

Q. Where does Somera Road appear to you?

A. On the top.

Q. It would be across here (indicating)?

A. Yes.

Q. Now, when you got to Norma McCauley's home, what happened?

A. The officers took me on what would be the east side of this diagram, by the side of the garage there is an area of [fol. 496] about three feet in width, walking space between that and the retaining wall.

Q. This would be the west side of the diagram (indicating). This would be the east side (indicating). This is the south and this is the north (indicating).

A. Excuse me. It would be the west side. There is this area that I spoke of, walking space between the garage and a retaining wall. They took me along that area, around the——passed the garage and passed the patio.

Q. Indicating this patio right here (indicating)?

A. That is true.

Q. Past the patio?

A. Yes, that is true, and across the lawn.

Q. Across the lawn down here (indicating)?

A. Yes.

Q. To where?

A. Right on across back past the bedroom.

Q. Over on what would be the east side?

A. Yes.

Mr. Armstrong: Let the record show that the witness has indicated a path going from the northwest corner of the diagram, proceeding in a southerly direction to approxi

mately the lowest part of the diagram that is occupied by figures and lines and thence east to the most easterly part of the diagram, is that right?

[fol. 497] A. That's right.

Q. Over in this area (indicating)?

A. Yes, and then north along the side of the bedroom and along the side—to a fencing, which encloses the children's yard. I don't see it marked there, but there is a fence that encircles the children's yard in front of the——

Q. (Interrupting) Would you point out the general area of the fence, please?

A. There is a fence that encloses this whole area here (indicating), and comes down the side of the house like this down to here (indicating).

Mr. Armstrong: The witness is indicating a line parallel to the north-south line, roughly parallel to the north-south line of the map as being the area of the fence, and roughly parallel to the east-west line and being the area of the patio, and on the northeasterly half of the diagram, indicating the children's play yard.

What happened then?

A. They took me through that gate and into the children's play yard and tried to take me through the eastmost door of the children's bedroom.

Q. You say they tried. Were they able to effect entry that way?

A. No. Then they tried to enter by the other door to the children's bedroom.

[fol. 498] Q. You say, they tried to enter. That is, they tried the doors?

A. Yes.

Q. But the doors were secured?

A. That's right, and then they tried to enter by the maid's room door and finally jimmied the door, which would be the one nearest to me in the children's room.

Q. By jimmy, you mean that somehow they forced the door?

A. They used an iron thing to open it.

Q. When you got inside the house, where did you go?

A. They opened that eastmost door.

Q. Once you got inside the house, where did you go?

A. Through the children's bedroom, stopping momentarily. Sgt. Hooper asked me what closet I had been in, and I pointed out Closet F.

Q. Would you indicate that, please?

A. It would be this closet right here (indicating), then into the hallway, and into Norma's bedroom.

Q. When you got into Norma's bedroom, who was there with you, in Norma McCauley's bedroom?

A. Sgt. Hooper, Officer Gravante, I believe Sgt. Gotch, but I am not positive about Sgt. Gotch, a photographer, I [fol. 499] believe Lt. Armstrong.

Q. All right.

The Court: Just one moment. Will counsel approach the bench a moment?

Mr. Armstrong: Surely.

(The following proceedings were had at the bench outside the hearing of the jury.)

The Court: It occurs to me, counsel, that we are now past the point at which this document was written, and for which purpose we have undertaken this voir dire examination.

Mr. Armstrong: Yes, your Honor. I was going to close this out by saying—I was asking him about the conversation without saying anything about it. There is an additional conversation which the People have said in their opening statement, on which a tape recording was made in District Attorney Roll's office, and I think perhaps rather than to go through an entire voir dire inquiry preceding that, that if I can just take this witness up to that time——

The Court: (Interrupting) Let me ask the District Attorney, are there any statements, either oral or written, subsequent to the written instrument in issue now, that you propose to introduce?

Mr. Alexander: Oh, yes. I can tell your Honor we propose to introduce the re-enactment of the crime, and we [fol. 500] propose to introduce a statement taken from him, I believe it was the 6th of July, in the office of the District Attorney. I do propose to do that.

The Court: Well, perhaps then your suggestion, Mr. Armstrong, would be a good one and we might as well hear, on this voir dire examination, all testimony that might be

pertinent to any subsequent statements or confessions or admissions.

Mr. Armstrong: This is my feeling: at this point, all of the things that could have been done that the defense claims were material had been done, so in the defense case in chief, we are going into the details of what was said and done in this bedroom. This re-enactment I don't feel is necessary now because it wouldn't be controlling on this question of law, whether or not he re-enacted things accurately or was able to respond to questions, or did, in fact, respond to questions.

I think those would be things that would be addressed to the tryer of the facts, once the confession were admitted, if it should be, so I don't intend to go into this inquiry, and I plan only to ask about a conversation had in the District Attorney's office, and show that he wasn't allowed to consult an attorney.

The Court: Very well.

Mr. Armstrong: And that is all on this voir dire.

The Court: If there is no objection, perhaps we might as [fol. 501] well go into that all at this time so that we can rule on it promptly, without taking additional voir dire testimony at such time as the People attempt to introduce that subsequent statement.

Mr. Armstrong: Yes, that is my feeling, your Honor.

The Court: Very well.

(The following proceedings were had in open court and in the presence of the jury.)

By Mr. Armstrong:

Q. Mr. Crooker, without going into what was said, was a conversation then had on those premises at that time?

A. Yes.

Q. Were the parties present that you have indicated?

A. Yes.

Q. Approximately how long were you in that locale, in the vicinity of the McCauley home?

A. Not more than an hour.

Q. Then, when you left the McCauley home, you went where?

A. Back to West Los Angeles Jail.

Q. Do you know approximately what time it was you arrived back at the West Los Angeles Jail?

A. Maybe 5:05, something like that.

Q. This is a.m.?

[fol. 502] A. Yes.

Q. When you got back to the jail, did you subsequently go to the office of the District Attorney of Los Angeles County?

A. Yes.

Q. And approximately— let's be sure of our dates on this. From your testimony, you said that it was about 5:00 a.m. on the morning of July 6th, is that right?

A. Yes.

Q. That you were taken back to West Los Angeles?

A. Yes.

Q. Now, what date and time was it, approximately, that you were taken to District Attorney Roll's office?

A. It was in the afternoon of the 6th. Now, the time, I can't tell you that very closely.

Q. Was it close to the noon hour or was it considerably after the noon hour?

A. I would say 2:00 or 3:00 or 4:00 o'clock, along in that area of time.

Q. You went to District Attorney Roll's office?

A. Yes.

Q. When you got to District Attorney Roll's office, who was present there?

A. Sgt. Gotch, Sgt. Hooper, Lt. Armstrong—— What is the other officer's name?

[fol. 503] Q. Stambler.

A. Stambler, Mr. Alexander, and Mr. Roll, Dr. Crahan, another man whose name I do not know, and a Stenographer, and the photographers.

Q. By photographers, you refer to newspaper photographers, or to police photographers?

A. Yes.

Q. Newspaper photographers?

A. Yes.

Q. All right. Now, at District Attorney Roll's office, was a conversation held there between yourself and District Attorney Roll or any of the other parties present that you described?

A. Yes.

Q. Will you tell us the substance of the conversation, without going into detail, just generally what the conversation was about.

A. Mr. Roll wanted me to repeat what I had written, and started that process, when I interrupted him and told him that from the beginning of my interrogation by the police that I had asked for an attorney, that I would like to talk to an attorney before answering their questions, and that this statement had been made and was responsible for the fact—from the fact that they would not allow me to do so.

Would he let me have an attorney with me?

[fol. 504] Q. Just one thing. This was 3:00 o'clock in the afternoon. Since the officers had come into your room the previous morning, had you, up to the time that you were in District Attorney Roll's office, been continuously in custody?

A. Yes.

Q. All right, and then, up to the time you came into District Attorney Roll's office had you been able to use the telephone for any purpose?

A. No.

Q. Continue. I am sorry.

A. As I recall, they woke me up to take me down there.

Q. All right. Go ahead. What happened there?

A. Mr. Roll said that I would have the right to a public defender. Now, whether or not—I believe that he asked me if I had any money, and I believe I told him that I had none, but that I would like to call an attorney, and I believe that I mentioned Raymond Simpson's name, that if he could not represent me, if he could not be with me, perhaps he could recommend someone who would.

Mr. Roll said again that I could have a public defender when I got to court. I asked him, "Why can't I have an attorney with me now?" At which point Mr. Roll pointed to Mr. Alexander and asked Mr. Alexander to convey my [fol. 505] rights to me, at which time Mr. Alexander told me that I could have a public defender, at which time I said, "Why can't I have an attorney with me now?"

Finally Mr. Roll permitted me to call Raymond Simpson in Long Beach. In fact, he put through the call.

Q. All right. Then he put through the call. Did you speak then with Mr. Simpson?

A. Yes, there was a telephone there in the room, and I did talk with him.

Q. You talked with Mr. Simpson at that time?

A. Yes.

Q. All right, now, this conversation you had with Mr. Simpson at that time, was that a private telephone conversation between just yourself and Mr. Simpson?

A. No, it was not; all the officers were present; everyone was present, and it was interrupted by Mr. Roll.

Q. Was anyone else on the line with you on an extension phone?

A. Mr. Roll.

Q. Mr. Roll was on the extension phone when you were finally allowed to call an attorney?

A. Yes.

Q. Did he say anything in the conversation between yourself and the attorney.

[fol. 506] A. Yes. I don't know if I can put this into words—he said to Mr. Simpson, "This boy doesn't have any money, you know, and you still want to represent him?" And he talked to him in that vein.

Q. Then what else did Mr. Roll say on that same line with you and your attorney, if you remember?

A. When I told Mr. Simpson that they were making me answer their questions, Mr. Roll interrupted and said that there was no coercion used at all, and that everything I had said was free and voluntary and that—well, language to that effect; and cut me off from that conversation I was having with Mr. Simpson.

Q. This conversation throughout that you had with your attorney at this time in Mr. Roll's office was a three-way conversation with yourself, Mr. Simpson and Mr. Roll all saying things on the phone?

A. Well, yes; I don't know the mechanical hookup, Mr. Armstrong; he had a phone at his desk; I had one at mine. He could talk to Mr. Simpson and so I presume it is a three-way phone.

Mr. Armstrong: You may cross examine.

The Court: We will take the afternoon recess. Do not discuss the case among yourselves nor talk to anyone about it

nor form any opinions or conclusions until the matter is finally submitted to you. We will take a ten-minute recess.

(Afternoon recess.)

[fol. 507] The Court: The jury is present. Resume the stand, Mr. Crooker.

JOHN RUSSELL CROOKER, JR., called as a witness in his own behalf, having been previously sworn, resumed the stand and testified further, as follows:

The Court: Cross examine.

Cross-examination

By Mr Alexander:

Q. Mr. Crooker, how tall are you, please?
A. Approximately five feet eleven and a half inches.
Q. On July 6th what was your approximate weight?
A. Approximately 174 pounds, I believe.
Q. I take it you weighed more then than you do now?
A. Possibly, I haven't weighed myself.
Q. How old are you?
A. 31.
Q. You have studied law, have you not, Mr. Crooker?
A. Yes, some.
Q. How much law have you studied?
A. One academic year.
[fol. 508] Q. During that year did you have any criminal law in your studies?
A. Yes, sir.
Q. Now, Mr. Crooker, what time did you get up on the morning of July 6th?
A. Approximately——
Q. On July 5th, I beg your pardon; I am speaking of the day of your arrest; I don't want to confuse you on that.
A. Approximately 9:30, I would say 9:00 or 9:30.
Q. When the officers arrived you were in your pajamas and in your bathrobe, is that right?
A. Yes.
Q. And you say that was 11:00 or 12:00 o'clock.
A. Yes.

Q. Your memory is pretty good as to time, is it, Mr. Crooker?

A. My memory is; I am not sure of the time; I approximate it to you.

Q. You told us when you arrived at Mr. Roll's office it was either 2:00 or 3:00 or 4:00 o'clock in the afternoon. Could you be mistaken as to the time the officers arrived at your home?

A. Could I be?

Q. Yes.

A. Yes, sir.

[fol. 509] Q. In fact, it could be closer to 1:30 that Officers Jackson and Krueger arrived at your place than 11:00, isn't that right?

A. I doubt it.

Q. It could be, though?

A. I made a phone call about 10:00 o'clock that morning and I daresay it couldn't have been three or four hours after that that the officers came. I daresay it was nearer an hour or an hour and a half, something like that, that they came.

Q. They came in. They had their guns drawn, and you raised your hands pursuant to their command, is that right?

A. Yes.

Q. Are you nervous in any way?

A. Yes, sir.

Q. And then after they frisked you they permitted you to bring your hands down and they handcuffed you, is that right?

A. Yes.

Q. Then they put the guns back in their holster, didn't they?

A. Yes.

Q. From that time on you did not see the guns, did you?

A. No.

[fol. 510] Q. Now, then, Officers Jackson and Krueger, did they in any way threaten you?

A. No.

Q. Did they abuse you in any way at all?

A. No.

Q. You asked for permission to get dressed and put your clothes on, isn't that right?

A. Yes.

Q. All they did was—they did not permit you to reach for your clothes; you asked for the particular article of clothing you wanted and Jackson reached in and got it for you and gave it to you, and you dressed that way, is that right?

A. Yes.

Q. When you asked for water they gave you water?

A. They gave, yes.

Q. When you asked for cigarettes they gave you cigarettes?

A. Yes.

Q. So up to that time you had no fear of the police officers, did you?

A. I really would like to answer the question and it would take a moment for me to do so.

Q. Well, were you in fear of those officers?

A. The fears which goes to what was going on, and why they wanted me, yes.

[fol. 511] Q. Were you in fear that you would be physically harmed by those officers?

A. By those particular officers?

Q. Yes.

A. I wouldn't say so; not at that time, at any rate.

Q. They had done nothing or said anything at all that would cause you to have any fear of bodily harm, did they?

A. No, not they.

Q. Then after that, Gotch and Stambler arrived, is that right? Sometime after the officers were there?

A. Yes, Mr. Gotch first.

Q. Mr. Gotch and then Mr. Stambler?

A. Yes.

Q. At that time you were seated somewhere in the living room of your apartment?

A. Yes.

Q. Did Officer Gotch tell you who he was?

A. I don't believe so, no; at least I didn't have the names of any of the officers.

Q. You don't recall now whether he told you who he was?

A. No, I would say I do recall that he did not tell me his name.

Q. Now, Gotch and Stambler, upon entering, did they say [fol. 512] anything to you?

A. Upon entering?

Q. Yes.

A. No.

Q. How long after they arrived did they first speak to you?

A. Possibly a matter of two or three minutes, a minute; very brief.

Q. Then they told you, one of them did, at least, that they were going to search your apartment?

A. Yes.

Q. Now, by that time Jackson and Krueger had left, is that right?

A. I don't think so, Mr. Alexander.

Q. Did they leave shortly thereafter?

A. Yes.

Q. Jackson and Krueger took no part in searching that house, did they?

A. Not to my knowledge.

Q. All right.

Mr. Armstrong Pardon me, may I caution Mr. Crooker to keep your voice up just a little louder; we are hearing you with some difficulty.

By Mr. Alexander:

Q. And you objected to Officer Gotch and Officer Stambler making a search of your premises, is that right?

[fol. 513] A. I told them that I thought that they should have a warrant to search it.

Q. You had learned something about search warrants?

A. No, sir.

Q. You had never learned that?

A. No, sir, I had not.

Q. What prompted you to tell them you thought they needed a search warrant?

A. When I say that I had not learned it, I have had no academic course in that respect. I have a general knowledge that, or a general impression which is, I grant you, very often misguided, that a warrant was necessary.

Q. That was your impression, right or wrong, and you told them so, is that right?

A. Yes.

Q. Did you tell them that you were a law student?

A. To Mr. Gotch?

Q. Yes.

A. Or, rather, Sgt. Gotch—I don't think so at that time.

Q. As a matter of fact your law books were right in the living room where you were, were they not?

A. Yes, they were, along with other books.

Q. And one of your law books was opened to the chapter [fol. 514] on "Murder," isn't that right?

A. No, that is not right, Mr. Alexander.

Q. Now, who spoke first, you or Gotch?

A. I think that Mr. Gotch, Sgt. Gotch spoke first, telling me he was going to search my apartment. It could have been that I spoke to him first, asking him what this was all about.

Q. Your memory is not clear on that point, is that correct?

A. That is correct.

Q. In any event, Gotch made a phone call, is that right?

A. Yes, he made, as I recall, three phone calls.

Q. And while he was searching the place did he say anything to you?

A. Yes, sir.

Q. Did he abuse you in any way at this point?

A. I don't understand the question.

Q. Well, did he use any violence on you?

A. You mean physical violence?

Q. Yes.

A. No, sir, no, sir.

Q. Did he threaten you in any way?

A. No, sir.

Q. How about Stambler, during this search did he use any violence on you?

[fol. 515] A. No, sir.

Q. Did Stambler threaten you in any way?

A. No, sir.

Q. Then nothing that they did or said up to that point caused you to have any fear of physical violence from them, is that right?

A. Nothing that they did at that time, no.

Q. Sometime that afternoon, men, you say, from the Crime Laboratory came; do you recognize the name Ray Pinker?

A. I recognize the name, yes.

Q. Was he one of the men who came?

A. I presume so. I have not seen Mr. Pinker, and I presume if I saw him I would recognize him. The name has been used so much; I presume he was there.

Q. Ray Pinker is a rather fair-complexioned man, light hair, rather slight in build; do you recall such a man?

A. Rather receding hair?

Q. Yes.

A. Yes.

Q. He came there?

A. Yes.

Q. He came there with Capt. Stillson, an elderly man?

A. With dark glasses?

[fol. 516] Q. Yes, an elderly man.

A. Yes.

Q. When they arrived did either Pinker or Capt. Stillson use any violence on you?

A. No.

Q. Did they threaten you in any way?

A. No.

Q. Then they were there while Gotch and Stambler were searching your place, is that right?

A. Yes.

Q. During the time the four of them were together, you had no fear of physical violence from any of them, had you?

A. During that time?

Q. Yes.

A. Or from what they did at that time?

Q. Yes, from what they said or did to you.

A. Not from what they said or did, no.

Q. In fact, they did not disturb you at all. You were sitting there in a chair in the living room, isn't that correct?

A. That is true.

Q. Then, along about 3:05 or 3:10 or something like that, I came into the apartment, did I not?

A. Well, as to the time, Mr. Alexander, I can't——

Q. Well, would that sequence be correct, that after the [fol. 517] Crime Lab man arrived, I arrived?

A. After the Crime man, yes.

Q. When I arrived, I came alone, did I not?

A. Yes, or as I recall.

Q. When I came in didn't Sgt. Gotch take me to your

chair and say to you, "This is Mr. Alexander of the District Attorney's Office"?

A. No, sir, he did not.

Q. You recall that positively?

A. I recall exactly what you did, Mr. Alexander.

Q. How long did I remain there?

A. You walked in the door. You stood looking at me. You walked around me, and you walked in toward my dressing room and my bathroom. I did not see you come out of that area of my apartment.

Q. I came out of your bathroom, didn't I?

A. I did not see you.

Q. You saw me go into your bathroom?

A. Into my bathroom?

Q. Yes.

A. No, no.

Q. As a matter of fact, I walked into the kitchen, did I not?

A. No, sir, you walked into my dressing room which is adjacent to my bath. I say that you walked toward my dressing room and toward my bath because they are adjacent to [fol. 518] each other.

Q. How long did I remain there in your apartment?

A. I have no knowledge. I did not see you leave so I don't know how long you were there. I did not see you leave.

Q. While I was there, would you say I was there all the time that you were there?

Mr. Armstrong: I object to that as calling for a conclusion of the witness.

The Court: Objection sustained.

By Mr. Alexander:

Q. After I once arrived, did I leave your apartment?

A. I did not see you leave, Mr. Alexander.

Q. Well, now, as a matter of fact, while you were seated in your chair was I not present when Gotch asked you where your car was parked?

A. No.

Q. Where the keys to your car were?

A. No, sir.

Q. The color of your car and the license number?

A. No, sir—were you not present?

Q. Present at that time.

A. You mean in the dressing room or bath?

Q. In the living room where you were seated.

A. No, sir.

Q. And did you not tell that your car was parked be-
[fol. 519] tween your house and another building, I believe to the east toward Western Avenue?

A. Now, would you describe this again?

Mr. Alexander: Would you repeat that again, please.

(Question read.)

A. No, sir.

Q. And while I was there did not Ray Pinker ask you where you had your cleaning done?

A. Someone asked me where I had my cleaning done.

Q. And did he not ask you where you had your laundry done?

A. Someone did, yes.

Q. And you told that someone, whoever it was, is that right?

A. That's right.

Q. And isn't it a fact that after that, Ray Pinker, Capt. Stillson and I left your apartment?

A. Mr. Alexander, I did not see you leave my apartment.

Q. In any event, up to this time nobody had used any violence on you, is that right?

A. That is correct.

Q. And nobody had threatened you in any way?

A. That is correct.

Q. And nobody had put any questions to you concerning the Norma McCauley murder?

[fol. 520] A. That is correct.

Q. Now, later on did not Ray Pinker, Capt. Stillson and I return to your apartment—or didn't you remember that? If you don't, just say so.

A. Mr. Alexander, I was sitting in full view of the door to my apartment; I did not see you go out or come in after —after you arrived at my apartment.

Q. Well, is it not a fact that while I was in that apartment, Mr. Pinker asked you to show me the fingers on your left hand?

A. While you were there?

Q. Yes.

A. This involves a sequence of when you got there. Of course, Mr. Pinker or an officer whom I presume to be from the lab asked to look at my hands. If I recall correctly, he did that almost immediately after arriving, and to my recollection, it is my recollection that you were not there at that time.

Q. And you would say that I was not there when Ray Pinker asked you to show me the fingers on your left hand?

A. That would be my best recollection.

Q. Is it not a fact that while I was there, Ray Pinker asked you to tilt your chin upward a bit so that I could see underneath your chin on the left side?

A. No, sir.

[fol. 521] Q. You say that did not happen?

A. That did not happen.

Q. And is it not a fact that I asked you, how did you get the injuries in the fingers on your left hand?

A. No, sir. To my best recollection, you asked me nothing. I didn't hear your voice in my apartment.

Q. Did you not tell me that you had been on the Pacific Coast Highway, that your bumper had become enmeshed with another bumper, and in releasing the bumpers you injured your fingers?

A. As I said, you didn't talk with me and I didn't talk with you.

Q. You deny I asked you that question and you made that reply to me?

A. Yes.

Q. Is it not a fact that I asked you how you received——

Mr. Armstrong: (Interrupting) Your Honor, pardon me. I will object to this line of questioning at this point as being argumentative.

The Court: Objection overruled. It is proper cross examination.

By Mr. Alexander:

Q. Is it not a fact that in Mr. Pinker's presence, I asked you how you received that injury under your chin on the left side, and you told me you didn't know you had any

[fol. 522] injuries there?

A. No, sir. An officer, and I believe it was the elderly gentleman in the dark glasses, pointed to the side of my—I was sitting facing west, and he was on this side (indicating), and pointed to my neck, and asked me what was that? I said, "What?" And he said, "That scar."

And I said that I wasn't aware that I had one, but that was that man doing that questioning. It wasn't you, nor were you in the room at the time.

Q. And that is your answer?

A. Yes, sir.

Q. All right. You told this jury that at one time while you were in your apartment you were asked about some burned paper that was in a receptacle in your kitchen?

A. Yes, sir.

Q. There was some burned paper there, wasn't there?

A. I cannot exactly recall whether he brought that waste-paper basket out and showed me that paper or not, so I am not absolutely certain that there was burned paper in there.

Q. Well, had you burned any paper?

A. Not to my recollection, Mr. Alexander.

Q. Had the police burned any paper while they were there?

[fol. 523] A. Of course, I don't know.

Q. You did not see them, did you?

A. No.

Q. Now, there was also some torn scraps of paper in that same receptacle?

A. No, sir. The torn scraps of paper were in the waste-paper basket in my living room by my overstuffed chair, and I believe it was Officer Stambler who took those pieces and put them into an envelope.

Q. Well, ultimately you were taken out of that apartment, is that right?

A. Yes, sir.

Q. And Stillson, Pinker, and I remained, is that correct?

A. I presume that you remained there, inasmuch as I had never seen you leave, as long as I was there facing the door, and exactly what officers were in my apartment at that time, I am not able to tell you, with the exception that Lt. Armstrong was there, Lt. Gotch—Sgt. Gotch was there, Officer Stambler was there.

Q. You remember Inspector Kerr?

A. No. As a matter of fact, I did not see Inspector Kerr in my apartment at all.

Q. You don't recall seeing him there at all?

A. I did not see him at all.

Q. In any event, up to that time that you were taken out [fol. 524] of that apartment, nobody had used any force on you of any kind, had they?

A. No, sir.

Q. Nobody had threatened you in any way?

A. No.

Q. And nobody had abused you in any way, had they?

A. No, sir.

Q. Nothing that anyone had said up to the time you were removed caused you to have any fear of physical violence from any of the men in that apartment, is that correct?

A. Nothing that had been done or said at that time, no.

Q. Now, you were then taken to the Crime Lab, is that right, the Police Building?

A. Yes.

Q. The old building?

A. Yes.

Q. And you were first taken to a photographic room or a photo room that you called Studio A, I believe?

A. Yes.

Q. And there you say that you were stripped, is that right?

A. They had me take off my clothes, yes.

Q. Did you tell us that any photographs were taken of you [fol. 525] while your clothes were off?

A. Pardon?

Q. Were any photographs taken of you while your clothes were off?

A. Yes.

Q. Did anybody make a visual examination of your body while your clothes were off?

A. Yes.

Q. And you say that pictures were taken of you in the nude?

A. Now, understand me, Mr. Alexander. The platform—they have a platform, I would say, about waist high. The camera angle hits you about in that area, and the portion

which they took were of my left hand and of my face, and of course the lower extremities were not taken, but I was nude.

Q. There was a platform hiding the lower extremities, is that right?

A. That is true.

Q. Up to about the waist, is that what you mean?

A. That is true.

Q. And no photographs were taken of you while your clothes were on, is that right?

A. In that room?

Q. Yes.

A. At that time?

[fol. 526] Q. At that time.

A. May I say that many photographs were taken of me, that the Times photographer was there. They did take the photographs after I had taken off all my clothes and had me take off my clothes for that purpose. It is my recollection that at that time they took no other pictures.

Q. By the way, when the Times photographer was discovered in that room, he was ushered out promptly, was he not?

A. I brought it——

Mr. Armstrong: (Interrupting) I will object to that question as calling for a conclusion of the witness, as to when he was discovered.

The court: Yes, that may be stricken. The objection is sustained.

By Mr. Alexander:

Q. Did you see that Times photographer ushered out of that room?

A. Yes.

Q. Now, what did you mean this morning when you told the jury that in that photographic room in Studio A no pictures were taken of you wearing your clothes?

A. What did I mean?

Q. Yes, what did you mean by that?

A. Again, I am afraid I don't understand your question.

[fol. 527] Q. You recall you told this jury this morning

that no photographs were taken of you in that Studio A while you were wearing your clothes. Do you recall that?

A. Yes, referring to your question just a moment ago, yes.

Q. And that is the truth, is it?

A. Yes, to the best of my recollection.

Mr. Alexander: I have here a photograph, if the Court please. May this be marked People's Exhibit 22?

The Court: People's 22 for identification.

By Mr. Alexander:

Q. I will show you People's Exhibit 22 and ask you whether you recognize that photograph?

A. I have never seen it before, no, sir.

Q. Do you recognize the subject on that photograph?

A. Yes, sir.

Q. That is you, is it not?

A. Yes.

Q. And that is a picture of you with your chin tilted up and your left hand on your left shoulder, is that right?

A. Yes, sir.

Q. Isn't it a fact that that photograph was taken in that photographic laboratory you have referred to?

A. Not to my knowledge, Mr. Alexander.

[fol. 528] Q. Directing your attention to the clothes that appear on that photograph, are they the clothes you were wearing when you went down to that laboratory?

A. Yes.

Q. Do you recognize the tie?

A. Yes, sir.

Q. Do you recognize the suit?

A. Yes, sir.

Q. Do you recall posing in that manner for any picture other than at that photographic laboratory?

A. No. I don't recall posing for one, no.

Q. Now, in the photographic laboratory did anyone there use any violence on you?

A. Any violence on me?

Q. Yes.

A. No.

Q. Did anyone threaten you in any way?

A. No, sir.

Q. Anyone abuse you in any way at all?

A. Sir, I don't understand your question when you say abuse.

Q. Well, do you know what physical abuse is?

A. Yes.

Q. Did anyone use any physical abuse on you?

A. No.

Q. Were you insulted in any way in that laboratory?

[fol. 529] A. No, sir.

Q. And how long did you remain in the laboratory?

A. I would say approximately twenty, thirty minutes.

Q. And what time did you leave that laboratory?

A. At what time?

Q. Yes, approximately.

A. I would say approximately 6:00 o'clock.

Q. After 6:00 o'clock, then, when you left that laboratory, had any questions been put to you about Norman McCauley's murder?

A. No, sir.

Q. Then from the laboratory you were taken to the Polygraph Room, is that right?

A. Yes.

Q. And that is where you met Mr. Willis?

A. Willis, yes.

Q. And you were left alone with Mr. Willis?

A. Yes.

Q. Now, Mr. Willis did not abuse you in any way physically did he?

A. If I may answer that this way: When the officers would not let me have an attorney, when they would not let me call an attorney, and when they would not let me have an attorney with me during any of my interrogation from the [fol. 530] time I first asked the first two officers who came to my door, when I asked Mr. Goteh, when I asked Mr. Willis, and Mr. Armstrong, that to me was abuse.

Q. That is physical abuse?

A. No, sir, of course not.

Q. Well, my question was, was any physical abuse used on you up to that time?

A. No, sir.

Q. And during the time Willis was with you alone, did he strike you?

A. No.

Q. Did he in any way insult you?

A. No, sir.

Q. Did he in any way abuse you physically?

A. Excuse me. You asked me if he in any way insulted me?

Q. Yes.

A. He, of course, didn't appreciate the fact that I wanted to have an attorney with me to take that test, and would not give any credence or any importance to the fact that I wanted an attorney.

Q. What did he say to you that insulted you?

A. I probably wouldn't call that an insult, Mr. Alexander.

Q. All he did was disbelieve you, isn't that right?

[fol. 531] A. I don't know that, Mr. Alexander.

Q. He just gave no credence to what you were saying, is that what you mean?

Mr. Armstrong: I object to that and ask that the last answer be stricken, and object to the question.

The Court: The objection is sustained. It calls for a conclusion of the witness.

By Mr. Alexander:

Q. In any event, what time did you leave Willis?

A. I didn't leave Mr. Willis. He left the polygraph room, I believe, during that period of questioning. I was in there, I would say, until 9:00 or 9:30, and I daresay that he wasn't there during the last half or three-quarters of an hour, at least, of that period of time.

Q. Somewhere around 8:45 or so he left, is that what you mean? We can't pin it down to the exact minutes I don't expect to, Mr. Crooker. Just approximately.

A. Every time you ask me the time of day, I have to go back from some point of departure. I presume that is what it amounted to, yes.

Q. Now, up to that hour, about 8:45, nobody had put any questions to you concerning Norma McCauley's murder, is that right?

A. Up to what time?

Q. 8:45?

[fol. 532] A. Oh, yes, sir.

Q. Who did.

A. Of course, with respect to time, as soon as Mr. Willis and Lt. Armstrong had exhausted their efforts to have me take the polygraph test without having an attorney with me, those officers and Sgt. Gotch and the other officer——

Q. Stambler?

A. —Stambler, entered a period of questioning.

Q. Now, what time was that, about?

A. I would say that that was maybe 6:30, 7:00 o'clock, in that area of time.

Q. And that was the first time any questions were put to you concerning the murder of Norma McCauley, is that right?

A. Yes.

Q. And how long did that continue over at the Crime Lab?

A. As I say, I think that we left there about 9:00, 9:30.

Q. Before you left, Armstrong had told you that you did not have to say anything you didn't want to say, is that right?

A. Yes, he used almost those exact words.

Q. And before you left, you had been given a sandwich and a carton of milk, is that right?

[fol. 533] A. That is correct.

Q. Now, during the time that Sgt. Gotch and Stambler were questioning you in the Crime Lab, other people were present, were they not?

A. During part of that time.

Q. Well, they would be coming in and out, would that be about right?

A. No, it isn't about right.

Q. Well, you tell us.

A. With respect to part of it—there was a period when, as I recall, Sgt. Gotch and Stambler and I think Willis were there together. There was a period when Lt. Armstrong was with them, and there was a period when Sgt. Gotch and Stambler were there alone. It wasn't a frequent going in and out of those various offices.

Q. In any event, did anybody strike you in the crime lab?

A. No, sir.

Q. Did anyone threaten to strike you?

A. No, sir.

Q. Somebody may have used profanity, is that right?

A. Profanity, yes.

Q. Did that frighten you?

A. No, sir.

[fol. 534] Q. Now, you told us that while you were at the crime lab you were asked about your association with Norma McCauley, whether you worked for her, how much you had been paid, and you told Gotch, Sgt. Gotch, that you did not recall, the stipend fluctuated as to time and amount, and you were then asked if she had given you any money and you said that she was interested in your scholastic career, and that she had given you money, is that right?

A. I said that she had helped me in my schooling.

Q. As a matter of fact, the last amount she had given you was $300, wasn't it?

A. I am not sure—I am not aware that that is the figure, no.

Q. Well, what do you think the figure is?

[fol. 535] A. I would say something in the neighborhood of between two hundred and two hundred and fifty dollars, something like that.

Q. Now, when was the first time that you were told that Norma McCauley was dead?

A. In the polygraph room at this time that we are now covering.

Q. And who told you that?

A. Sgt. Gotch.

Q. And you told this jury that Sgt. Gotch told you at that time, "You stabbed her and strangled her to death."

Were those the words Sgt. Gotch used?

A. Yes, sir.

Q. "You stabbed her and strangled her to death"?

A. Yes. I am not giving the verbatim quote that I can be positive of, but those were in substance the words that were used.

Q. And before you left that place, you asked Armstrong if the officers would use any force on you to make you answer questions, and Armstrong said to you, "This is a free country," and you repeated your question, and Armstrong then said to you, "You don't have to say anything

you don't want to," and that was before you left that place, is that right?

A. That is true.

Q. What did you understand Armstrong to mean when he [fol. 536] said to you, "You don't have to say anything you don't want to"?

A. After Mr. Armstrong had made the last statement which you have read, he said——

Mr. Armstrong: (Interrupting) Just a minute. I will object to this as calling for a conclusion of the witness.

The Court: Objection sustained.

By Mr. Alexander:

Q. Anyway, you left there, and you arrived at West Los Angeles about 10:30, is that right?

A. I would approximate it, yes.

Q. And you were taken immediately to the second floor of that police station, is that correct?

A. Yes, sir.

Mr. Alexander: I have here a map, if the Court please. I will ask that it be marked People's Exhibit 23.

The Court: People's 23 for identification.

Mr. Armstrong: The defense will offer to stipulate that the map is a scaled—it portrays what it purports to portray. Beyond that, the defense makes no stipulation as to materiality at this time.

Mr. Alexander: In other words, you will stipulate that this is an accurate scaled map of the second floor of the West Los Angeles Police Station, without stipulating as to its materiality?

Mr. Armstrong: That is correct.

Mr. Alexander: The People accept that. It is a portion of [fol. 537] the second floor of the West Los Angeles Police Station.

Mr. Armstrong: That it portrays what it purports to portray.

The Court: Subject to any corrections which any witness may indicate.

Mr. Alexander: Yes, your Honor. May I pin this up?

The Court: Yes. Put it on the other side. Put the thumb tacks in the frame on the other side.

(Mr. Alexander affixes map to blackboard.)

By Mr. Alexander:

Q. Mr. Crooker, you have seen this drawing, have you not?

A. Yes.

Q. Do you recognize People's 23 to be a drawing of the three rooms described by Officer Gotch, two squad rooms and the Commander's office, Lt. Armstrong?

A. Generally, yes, I do.

Q. Now, when you came into this room, how did you enter?

A. Hasn't that last squad room a solid back to it, Mr. Alexander?

Q. Which squad room do you mean, the one I am pointing to now (indicating), the one furtherest to the west?

A. If not, is there another one in back of it?

Q. There might be. All I know is th we have been talking about three rooms. You came through the hallway, [fol. 538] did you not?

A. Yes. The reason that I am hesitant is that I am not sure how those stairs go after they get up, but I went into this last squad room, the furtherest squad room on the west.

Q. To get into that squad room, you passed through this portion marked "hall", did you not?

A. Well, I presume so.

Q. Now, do you recall when you were brought to the station house there were a number of newspapermen, cameramen there at the station house?

A. I can't recall whether they took pictures at that time.

Q. I didn't ask you that. Were they there?

A. Well, sir, that is the only way I recognized photographers during this entire interrogation, with their cameras.

Q. Were there a number of people in the vicinity marked "hall" and "reception office" when you first came into that building?

A. There were a number of people in the reception office behind that counter.

Q. About how many people would you say were there?

A. I wouldn't want to approximate that.

Q. Would you say there were more than twelve people there?

[fol. 539] A. I would doubt it. I would rather not approximate it. I didn't pay any attention to that.

Q. But there were people there that you do recall?

A. There were some people in that reception office back of that counter.

Q. Ultimately you were brought to the Commander's office, marked "Commander's Office" there, is that right?

A. That is true.

Q. And you sat behind Lt. Armstrong's desk and you wrote People's Exhibit Number 18, is that correct?

A. Yes, sir.

Q. Now you recall to the east of that desk there are some windows?

A. Yes, sir.

Q. And to the north there are more windows, is that right?

A. Yes, sir.

Q. And the doors between the rooms had glass on top, is that right?

A. I can't swear to that. As I recall, the one to the reception office does, and ——

Q. That is this one (indicating on diagram)?

A. I would conject that.

Q. That would be the most easterly door between the reception office and the commander's office?

A. Yes.

[fol. 540] Q. That does have glass, is that right?

A. As I recall.

Q. Now the morning of July 6 and the night of July 5th was rather warm, was it not?

A. I can't recall the weather, particularly. It didn't impress me one way or the other.

Q. Do you remember the windows north of the commander's office and the windows to the east being open?

A. Do I remember it? No.

Q. You have no recollection of that at all?

A. No.

Q. How long did you remain at the most westerly room marked "squad room" on People's Exhibit Number 23?

A. That is the fartherest one over?

Q. Yes, to the left.

A. To the west—oh, not very long, maybe ten minutes, fifteen minutes.

Q. Where were you taken to?

A. To the commander's office.

Q. How long did you remain in the commander's office?

A. Well, of course, I was booked about 12:15, until then; and then back directly to that office and there until 3:30.

Q. Well, now, before we come to that, you were brought into the place about 10:30, this room there, about ten minutes in that squad room to the left, and then you were [fol. 541] brought to the lieutenant's office, is that right?

A. Yes.

Q. Would you say it was close to 11:00 or so, at that time?

A. By the time I got to the commander's office?

Q. Yes.

A. No, depends on how long it took to drive out to West Los Angeles. My best recollection being that we left down town about 9:30. I would say it would be before 11:00 that we were in the commander's office, in fact.

Q. Between 11:00 or whatever it was, a quarter to 11:00, whatever it was there, until the time you were booked, you remained in the commander's office, is that right?

A. Yes.

Q. And the doors between the commander's office and the rooms marked "squad rooms" were open, were they not?

A. I can't answer that. I was seated in a chair at the end of the commander's desk, facing the desk, and could not see behind me.

Q. That is a rather small room, is it not?

A. Pardon me?

Q. That is a rather small room, is it not, the commander's room is a rather small room?

A. Relatively, I would say, yes.

Q. Then you could not see the door leading to the squad room, is that what you say?

[fol. 542] A. As I say, I am sitting with my back to that door, yes.

Q. Sometime later on you were booked and you were taken downstairs; and how long did that take?

A. Oh, perhaps fifteen minutes, or something like that.

Q. And then what happened?

A. I was brought back to that office.

Q. Then would you say after you were brought back to that place, you remained there continuously without a break?

A. Well, for example, I have no recollection of being taken to the laboratory at all.

Q. Don't you recall a doctor coming in and making an examination of you?

A. If you consider that a break that was in the room, you understand.

Q. What did that examination consist of?

A. A man came in and held up my hand and looked at it like this (indicating). Had me take off my shirt and looked at an area here on my arm (indicating). Ask me if the knuckle on my finger hurt—and that was it.

Q. Didn't he look at any place under your chin?

A. He could have.

Q. And after that he left, is that right?

A. Yes.

[fol. 543] Q. Now what time was it when Hooper hit you on the knee?

A. Assuming that the time of 3:30 given to me by Mr. Gravante—and you understand it was given to me; I didn't have a watch.

Q. That was given to you at the completion of that statement?

A. That's right; that's right. I would say 2:30, quarter of 3:00, 3:00 o'clock; right in that area of time.

Q. How long did it take you to write that statement?

A. Maybe three-quarters of an hour, something like that.

Q. Describe the manner in which Hooper struck you on the knee.

A. Describe it?

Q. Yes, what did he do?

A. I was seated facing the commander's desk, with enough area between the desk and my chair for a person to walk. When he first struck me, he was seated at the commander's desk chair, the leather one, and jumped from there to a chair next to me, facing those northernmost windows, and banged his hand down on my leg.

Q. Was it his open hand?

A. Yes.

Q. What part of the leg did he strike, just the kneecap?

[fol. 544] A. No, just above it.

Q. Just above the kneecap. Was that a hard blow?

A. I would say so, yes, sir.

Q. You felt pain?

A. As much as you feel from that type of blow, yes.

Q. Will you do this for me; suppose you come down and let me sit here and strike me the way Hooper struck you; just what position were you in?

(Mr. Alexander leaves counsel table and sits in chair in front of railing adjacent to jury box.)

(The witness leaves witness stand and stands near Mr. Alexander.)

By Mr. Alexander:

Q. You say your left knee was over your right?

A. As I recall.

Q. He struck your left leg or your left knee?

A. As I recall, yes.

Q. Your left must have been over the right?

A. Yes.

Q. Go ahead and strike me as hard as Hooper struck you.

A. He jumped from here and like that (striking Mr. Alexander on the leg).

(Witness resumes stand.)

(Mr. Alexander resumes place at counsel table.)

By Mr. Alexander:

Q. And that is the blow he struck you, that is about it? [fol. 545] A. Yes.

Q. That frightened you, did it, and you had fear?

A. Mr. Alexander, yes, I would say so, I did.

Q. Then you turned to Armstrong and said to Armstrong, "See, they are going to use force to make me talk before I can see a lawyer or an attorney," is that right?

A. I turned to him, "There, you see." And he said, "What do you mean?" And I said, "They are going to use force to make me answer their questions before I have an attorney with me."

Q. Did you say that as calmly as you are saying that now?

A. Certainly not, sir.

Q. Were you excited?

A. Yes, sir.

Q. Were you frightened?

A. Yes, sir.

Q. How many men were in the room at that time?

A. I am not exactly sure whether or not Mr. Gravante was in the room. As I say, after Hooper had hit me the second time, he left, and immediately upon leaving Mr. Gravante was right there at my chair. So I presume he was either in the doorway at that time or in the room at that time.

[fol. 546] Q. Did you make any outcry when Hooper struck you?

A. No, sir.

Q. Nothing like "Ouch", or anything like that at all?

A. No, sir.

The Court: We will adjourn for the day at this time.

Ladies and gentlemen, do not discuss the case among yourselves nor talk to anyone about it nor form any opinions or conclusions until the matter is finally submitted to you. We will take up again at 9:30 tomorrow morning, 9:30.

(Whereupon the aforementioned entitled cause was adjourned at 4:10 p.m., Tuesday, November 22, 1955, to resume at 9:30 a.m. Wednesday, November 23, 1955.)

[fol. 546a] In the Superior Court of the State of California in and For the County of Los Angeles

Santa Monica Dept. B Hon. Stanley Mosk, Judge

[Title Omitted]

Transcript of Proceedings November 23, 1955

[fol. 547] The Court: The jury is present. Resume the stand, please, Mr. Crooker. You may continue with the cross examination, Mr. Alexander.

JOHN RUSSELL CROOKER, JR., called as a witness in his own behalf, having been previously sworn, resumed the stand and testified further as follows:

Cross-examination (Continued).

By Mr. Alexander:

Q. Mr. Crooker, last night you told us how Sgt. Hooper reached over and slapped you, banged his hand down on your knee, and you turned to Lt. Armstrong and said, "There, you see." Now, at this point where was Lt. Armstrong?

A. In the doorway to the outer office.

Q. Can you see that pretty well now, Mr. Crooker (referring to diagram on board)?

A. Yes.

Mr. Alexander: Can the jury see that?

Q. When you say the doorway to the outer office, would you point to which doorway you mean, please?

[fol. 548] A. That would be this office and this doorway (indicating).

Q. The doorway that connects the room called "Commander's Office" to the outer office which is at the right-hand side of our plot, is that correct?

A. Yes.

Q. Then you say you saw Officer Gravante there, is that right?

A. I did not see Mr. Gravante at that point. As I described to you, Officer Gravante immediately, after Sgt. Hooper had hit me in the stomach twice, was then by the desk in back of my chair. In other words, he came there immediately as Mr. Hooper left.

Q. By the desk, you are now referring to that portion marked "Desk" in the Commander's office?

A. Yes, sir.

Q. Then you say that Hooper then struck you in the stomach twice, and you sat back, is that right; you moved your body back?

A. Yes.

Q. Not forward?

A. Yes, I was sitting like this (indicating).

Q. Now, regardless of the hour, see if we can fix that

with relation to events that occurred after the man whom we have referred to here as Dr. Dean came in and looked at your hands—you recall that, he looked at your right [fol. 549] arm?

A. Yes.

Q. About how long after Dr. Dean had left did this occur?

A. Well, the man to whom you refer that was introduced to me as a doctor, and I presumed him to have been a doctor, after he left, or ,rather, he had come into the room almost immediately, as I recall, after I had been booked. In other words I had been taken down and booked, and I came back up, and they were about to again question me, and this man came into the room.

Q. My question, though, Mr. Crooker, was how long after he had left.

A. And to answer your question, I would say fully an hour and a half later.

Q. After, as you say, Hooper struck you in the stomach twice, you then saw Gravante standing behind your chair?

A. Yes, he began to talk to me.

Q. And just what did Gravante say to you?

A. He said that Sgt. Hooper meant exactly what he said.

Q. Didn't Gravante at that time ask you how you received injuries to your fingers and your neck?

A. No, sir. Officer Gravante at that point told me that—I [fol. 550] told him that I did not kill Norma, and he told me that he knew I did.

Q. And then you asked for—— Strike that out.

Was there some talk about you writing how—was there talk of writing out what happened?

A. At that point I asked Officer Gravante what he wanted me to say; what I could do to make these officers leave me alone until I could have an attorney.

Q. What did Gravante say to that?

A. He told me he wanted me to write down what had happened.

Q. What did you say to that?

A. I said, "What do you want me to say?"

Q. Go on, give us the conversation, please.

A. Well, that is the gist of the conversation, Mr. Alexander. I said to him in that exchange of questioning and

answering, I said to him I would write anything he wanted me to write if they would leave me alone until I had an opportunity to talk with an attorney.

Q. Then a pad was procured for you, is that right, a yellow pad?

A. Yes, he told me he would get paper and pen.

Q. They procured a pad of paper and a pen?

A. Yes.

Q. And you proceeded to write?

A. Yes.

[fol. 551] Q. And you said you wrote for about 45 minutes, is that correct?

A. A half-hour to forty-five minutes, something like that.

Q. During that half-hour or forty-five minutes you ran out of cigarettes, did you not?

A. I believe I did.

Q. And Gravante let you have some of his cigarettes, did he not?

A. I believe he did.

Q. Did you have coffee during that time?

A. Yes, I did.

Q. You and Gravante were alone?

A. Yes.

Q. During the time that you wrote?

A. May I, in answering your question about being alone or who was in the room at any one time—answer it this way: During my entire interrogation from the time that the police came in my apartment and talked it over—my chair, for example, in the Commander's office, was placed in such a position that I was diagonally facing the Commander's chair so that I did not have a clear view of the reception office. I did not have a clear view—I did not have any view of the other officers back of me. People could have been in back of me without my ever realizing it.

[fol. 552] Mr. Alexander: Would your Honor pardon me for a moment, please. (Referring to documents.)

The Court: Surely.

By Mr. Alexander:

Q. Directing your attention to People's Exhibit Number 20, do you recognize that photograph as being a photograph of the commander's desk, the chair behind this desk?

A. I generally recognize that as his office, yes.

Q. During the time you wrote People's Exhibit Number 18, you were sitting in that leather chair, were you not?

A. When I wrote this?

Q. Yes.

A. Yes. This is not, incidentally, a replica of the office at that time.

Q. In what way is it different?

A. For example, it is my recollection that there was covering over this window—I say covering, I thought there were venetian blinds over this window; also thought those windows there had venetian blinds. Of course, we can't see those.

Q. That is the windows in the northerly portion of the commander's office you recall having venetian blinds?

A. That is my best recollection.

Q. Venetian blinds on the easterly windows of the commander's office?

A. Then, of course, there are other chairs in this room. [fol. 553] For example, I was sitting during my interrogation in this area at the end of this desk.

Q. That is to the right of the commander's chair, is that right?

A. Well, yes, you would call it to the right of his chair, at the end of his desk.

Q. In any event, when you wrote People's Exhibit Number 18, you were seated behind this desk at his chair; that is where you wrote it?

A. Yes.

Q. In that position you could see the entire room, could you not?

A. I could see the entire room.

Q. Is that right?

A. Yes.

Q. Where was Gravante at that time?

A. He was seated in this chair—by "this chair", I would say nearer this end of the desk.

Q. To your right, at the right hand side of the desk, is that what you mean?

A. No, I don't; I mean exactly the opposite.

Q. To the left?

A. Yes.

Q. The left is up against the wall?

A. Here is the desk (indicating on photograph).

Q. Yes.

[fol. 554] A. The chair—a chair such as this was placed, I would say, in this position; in other words, toward that end of the desk, which would be left, would it not?

Q. In the front of the desk closer to the easterly wall, is that what you mean?

A. If that is east in that direction.

Q. As that diagram is drawn——

Mr. Armstrong: Pardon me, Mr. Alexander, that is not what the witness was indicating. As I understood it, to the front of the desk. I just want to keep our records straight.

By Mr. Alexander:

Q. That would be south on that drawing, south on People's Exhibit Number 23, south side of the desk closer to the east.

Mr. Armstrong: I believe it would be to the south side.

Mr. Alexander: If it is not, Mr. Armstrong, I will accept your version of what he is saying.

Mr. Armstrong: I am not familiar with the premises. According to the discussion on that desk, that is my understanding of what he said, that he would be to the south, yes.

By Mr. Alexander:

Q. Now, during the time that you were writing, Gravante was seated, as you describe; now, did anyone else come into the room?

A. Mr. Alexander, it is possible that someone brought coffee in to the room during that time.

[fol. 555] Q. Brought coffee to you two, whoever it was?

A. Yes.

Q. Now, when you asked Gravante what he wanted you to write, did Gravante tell you what to write?

A. No.

[fol. 556] Q. The writing was your own language, was it not?

A. My own language?

Q. Your own choice of words, I mean.

A. Well, of course, not all of my words, no.

Q. What did Gravante direct you to write, in that statement?

A. At that time?

Q. During the entire time that you wrote?

A. All during the entire time that I wrote, nothing.

Q. I beg your pardon?

A. Nothing.

Q. He let you alone and permitted you to write, isn't that right?

A. He told me to put it in my own words, yes.

Q. Then you proceeded to put it in your own language?

A. Yes.

Q. At no time did he say to you, "I want you to write this and so"?

A. At one point when I was writing about the knife, Officer Gravante didn't like the way I wrote that. He added a word, I believe.

Q. Do you recall what word he added?

[fol. 557] A. (No audible response.)

Q. Do you want to see People's Exhibit No. 18, if that will help you?

A. Yes, I would. (Examining same.) Right here (indicating).

Q. You are now referring to the 5th line from the bottom of Page 3. That is, "I found a kitchen," and next to "kitchen" is the word "about." Between the word "kitchen" and "about" there seems to be a hyphen and the word "knife" written in. Is that what you mean?

A. That is what I mean, yes.

Q. In other words, originally that read, "I found a kitchen about ten inches long," and that was changed to read, "I found a kitchen knife about ten inches long."

Is that what you are referring to?

A. Yes.

Q. When you wrote that, you didn't mean to say you found a kitchen ten inches long, did you?

A. Sir, I did not. In addition, this last page was, as I recall, this addition was put in at his inception, also.

Q. That is, the entire page, what appears on Page 5, was what he told you to put in is that correct?

A. He asked me questions pertaining to it.

[fol. 558] Q. And after he asked you questions pertaining to it, you proceeded to write?

A. Yes, as I recall.

Q. And the language you wrote was your own language, your own choice of the words?

A. Yes.

Q. Now, Mr. Crooker, after that was completed, you were taken back to 1100 Somera Road, is that correct?

A. Yes.

Q. And when you were through with 1100 Somera Road, you were brought back to the West Los Angeles station.

Can you estimate the time it was that you were returned to the station.

A. Assuming that this 3:30 is correct, I would say something in the neighborhood of 4:30 or 5:00 o'clock, about that time of morning.

Q. And when you were returned, there was no more questioning, was there?

A. Yes.

Q. Who questioned you then?

A. Coming down from the house, I was taken down there by Lt. Armstrong and Officer Gravante, and in the house I of course did not know where the knife was and couldn't tell them. They were very disturbed by this, to put it into their language. Lt. Armstrong said that I did know where [fol. 559] it was, and where was it, and that I was crazy if I thought that he was going to walk from there to my apartment looking for it.

Q. When you were returning to the station, that is my question.

A. I will come to that, if I may. All of this questioning proceeded all the way down to the station, and when we got to the station Lt. Armstrong stayed outside the office. Officer Gravante was with me in the first squad room there, and I implored Officer Gravante that if they thought that I knew anything about the knife or where the knife was, to please take me and we would go and look for the knife.

I told him that I didn't know where any knife was, and implored him to convey that to Lt. Armstrong, as I had been trying to convey it to him at the house. That conversation took place at that time.

Q. Well, then you were fed, were you not?

A. No, sir—yes, you are right.

Q. And where were you fed?

A. Right there.

Q. In the Detective Headquarters, is that right?

A. Yes.

Q. And after you ate, you were permitted to go to bed, isn't that right?

[fol. 560] A. Yes, sir.

Q. And you slept there until you were awakened to be brought down to the District Attorney's office, is that right?

A. I cannot recall exactly whether or not they took fingerprints that morning. Now, they took a tremendous number of fingerprints from me, and whether or not they took any that morning, I cannot exactly recall. If not, that would have been, as I recall, my only interruption, other than to come and get me.

Q. You were taken to our office, as you say, at 2:00 or 3:00 or 4:00 o'clock. From the time that you went to bed on the morning of the 6th until you were brought to our office, did anyone awaken you or question you in any way?

A. With this one exception——

Q. Of being fingerprinted?

A. If that was an exception.

Q. Can you tell us whether you went to bed, then awakened, were fingerprinted, and permitted to go back to bed again, or were you fingerprinted after you were awakened?

A. When I was fingerprinted, I was very exhausted all of this time that I was in the West Los Angeles Jail, and I spent my time there sleeping when I could.

Q. Now, before you were brought to our office, you were [fol. 561] fed again, were you not? When I say our office, I mean the District Attorney's office.

A. I was fed?

Q. Yes, you ate, did you not?

A. I don't have any recollection of that, Mr. Alexander, at this time.

Q. Didn't the trusty bring you some food about noontime or so?

A. Are you referring to Dr. Crahan's office after——

Q. (Interrupting) No, I am referring to the West Los Angeles Jail, before you were brought to our office.

A. Oh, certainly. I thought you were talking about being fed in Mr. Roll's office.

Q. No. You were fed again, then, at the West Los Angeles Jail before being brought to our office?

A. As I recall, yes.

Q. By the way, the evening before when you were brought downtown from your apartment and brought from your apartment to the West Los Angeles Jail, and brought from the West Los Angeles Jail to the District Attorney's office, no red light and siren was used, was it?

Mr. Armstrong: I object to it as being immaterial.

Mr. Alexander: This is a question of time, your Honor, the time consumed.

The Court: Objection overruled. You may answer.

[fol. 562] Mr. Alexander: That is the only purpose of the question.

The Witness: Not that I recall.

By Mr. Alexander:

Q. In other words, the officers observed the traffic rules as they drove?

A. Yes.

Q. Now from the time that you arose on the 6th until the time that you were taken to our office, had anyone questioned you?

A. Would you repeat that? I am sorry.

Q. Would you read that to him please?

(Reporter reads question.)

A. Sgt. Gotch questioned me at one other point of time about the knife again, whether or not it was before going down there or not I cannot specifically recall.

Q. Well, in any event, you would not call it any prolonged questioning, would you?

A. No.

Q. Then you were brought to our office, and who brought you to our office?

A. Sgt. Hooper, Lt. Armstrong, a little, short officer, I believe was in the car.

Q. Would that be Stambler you are speaking of?

A. Stambler, and I am not positive whether Sgt. Gotch was there in the car on the trip down or not.

Q. Now, when you got to our office——

The Court: (Interrupting) When you say "our office", [fol. 563] you mean the office of the district attorney?

Mr. Alexander: Yes, I am sorry, your Honor.

By Mr. Alexander:

Q. When you got to the district attorney's office, you met Mr. Roll there, did you not?

A. Yes.

Q. I was there?

A. Yes.

Q. And Mr. Armstrong was there?

A. Lt. Armstrong, yes.

Q. Lt. Armstrong?

A. Yes.

Q. And Officer Hooper?

A. Yes.

Q. Stambler was there?

A. Yes.

Q. And a man who you described as Dr. Crahan?

A. Dr. Crahan.

Q. And another man whose name you did not know? You recall that you told us about another man whose name you do not know, was there, is that right?

A. I believe.

Q. And there was a reporter, a young lady, is that right?

A. Yes.

Q. Now, when you got to our office——

A. (Interrupting) Did you mention Sgt. Gotch's name?

[fol. 564] Q. I did not.

A. It is my best recollection that Sgt. Gotch was there also.

Q. That is your recollection?

The Court: When you say "reporter", you mean a stenographic reporter, not a newspaper reporter?

By Mr. Alexander:

Q. A young lady, a stenographic reporter?

A. And, of course, many photographers.

Q. Well, during the time——

A. (Interrupting) And other people that I did not know.

Q. During the time that you were being questioned by Mr. Roll, were there photographers in that room?

A. I wouldn't know. I don't think.

Q. Were there any pictures taken of you while you were being questioned by Mr. Roll?

A. No, not while I was being questioned by him.

Q. All right. Now, the people whom I mentioned in the office of Mr. Roll; that is, the district attorney's office, did anyone strike you there?

A. No.

Q. Did anyone threaten you in any way?

A. You mean vocally say, "We are going to do something to you"?

Q. In any way that you can imagine.

[fol. 565] A. Well, yes, sir, in a way that I can imagine.

Q. All right. You tell us what you imagined to be a threat.

Mr. Armstrong: I will object to the form of that question.

The Court: In view of the witness's previous answer, I believe that is an appropriate question. You may answer.

A. I tried to tell Mr. Roll of my treatment the previous night. I tried to tell him that from the beginning of that interrogation I had been trying to have an attorney with me before answering questions, and that I had not been allowed to do so.

I cannot recall my exact words just before this happened, but at that point Sgt. Hooper interjected and stopped me from talking and said, "I don't believe that we hurt you," and I told Mr. Roll that Sgt. Hooper had hit me twice, or I told that to Sgt. Hooper, and Sgt. Hooper, as I recall, repeated what he had first said, "I don't believe that we hurt you."

Q. Now, is that what you are referring to as a threat made in the office of the district attorney?

A. That was what I was apprehensive of, Mr. Alexander.

Q. I asked you about a threat, and we were talking about a threat.

A. And as I recall your question, you wanted to know [fol. 566] whatever I considered was threatening.

Q. Considered or imagined to be a threat. Have you told us now everything that you imagined to be a threat in the office of the district attorney?

A. No.

Q. Tell us all that you believe was a threat.

A. When I was finally allowed to call Ray Simpson, I was—if I may use the word advisedly, threatened by the very presence of the same officers who had interrogated me the previous day.

I was also—if I may again use the word "threatened" advisedly—threatened by Mr. Roll's attitude with Mr. Simpson, and did not feel that I could say to Mr. Simpson what I wanted to say to him.

Q. What did Mr. Roll say to Mr. Simpson that in your mind constituted a threat to you?

A. I don't recall his exact language, or what he actually said to Mr. Simpson.

Q. Well, do you recall anything that he said that you felt was a threat to you?

A. What I do recall is his interrupting my conversation with Mr. Simpson on two occasions.

Q. Is that what you consider a threat to you?

A. I was apprehensive of it to this extent, that I had been trying from the beginning to have an attorney with me. I thought that this way my opportunity, and if I did not have [fol. 567] it, I had not accomplished anything.

Q. And is that what constituted a threat to you?

A. I felt that if I said anything to Mr. Simpson, that the conversation would be ended and that I would be back in the hands of the same officers who had worked on me the night before.

Q. As a matter of fact, you came to our office about 2:30 in the afternoon of July 6th, isn't that right?

A. I beg your pardon.

Q. Repeat that, please.

(Reporter reads question.)

A. It could have been, Mr. Alexander.

Q. And Mr. Roll asked you a number of questions to which you made replies, is that right?

A. Yes.

Q. And when you first came into Mr. Roll's office, you did not mention anything about any attorney to Mr. Roll, is that right?

A. When I first came in?

Q. Yes.

A. I spent considerable time being photographed and questioned about my sanity and things of that nature.

Q. Mr. Crooker, when Mr. Roll started to take the statement from you, did you tell him anything about an attorney at that time?

A. As I recall, Mr. Alexander, pertaining to the state-
[fol. 568] ment, itself, that questioning did start and I interrupted it.

Q. You interrupted it at a certain point, and then you asked Mr. Roll whether you could have an attorney, isn't that right?

A. That isn't all that I said to him at that point.

Q. You told him that you would like to have an attorney with you?

A. Among other things that I said to him, yes.

Q. All right, and then did Mr. Roll offer you the yellow telephone book and tell you to pick out any——

A. (Interrupting) He certainly did not.

Q. He did not?

A. He did not.

Q. And then did Mr. Roll ask you if you had any particular lawyer in mind?

A. I believe that he did ask some questions in that vein, yes.

Q. And then did you tell Mr. Roll that you had in mind Mr. Ray Simpson of Long Beach?

A. Yes, sir.

Q. And then did Mr. Roll talk to his secretary and ask his secretary, Miss Mildred Evans, to get Mr. Simpson on the telephone?

A. Yes, sir.

Q. And then did Miss Evans say to Mr. Roll, "Mr. Simp-
[fol. 569] son is on four"?

A. Well, of course, I couldn't hear whomever this Miss Evans—whatever this Miss Evans was saying. That was over a communication system.

Q. And then did Mr. Roll get on the telephone and say, "Simpson"? Did you hear him say that?

A. I am not exactly sure how he addressed Mr. Simpson.

Q. And then after a pause did he say, "This is Ernie Roll"?

A. I believe he introduced himself.

Q. And then after a pause did he say, "Pretty good. I am sitting here with a young man that has been placed under arrest in connection with the murder up at Bel-Air, John Russell Crooker, I think that is the way he pronounces it," and then after another pause Mr. Roll says, "What?" And then after another pause, Mr. Roll said, "Yes, he has asked me. We have tried to take his statement. He said he wanted to talk to you. I asked him if you would represent him. He said he would like to talk to you in connection with that matter," and then another pause, and Mr. Roll said, "And he is here. If you want to talk to him, why I will put him on the phone and you can talk to him."

Did Mr. Roll say that?

A. I wouldn't be able to corroborate that.

Q. Well, in substance, did he say that in your presence, [fol. 570] Mr. Crooker?

A. In substance, Mr. Alexander, it is my best recollection that he told Mr. Simpson that he had a man in his office who wanted to talk to him, that the boy did not have any money to pay for an attorney. Did he still want to talk to him? That is my best recollection of that conversation.

Q. Well, now, up to what I have read so far, would you say that was the substance of the conversation?

A. I would not be able to corroborate that, no.

Q. You would say that was not the substance of the conversation?

A. I would say no.

Q. After that, Mr. Roll said, "All right," and then he turned to you and said, "Go and pick the phone up over there," pointing to an extension line in his own office?

A. After he had talked to Mr. Simpson, he directed me to a phone on the little phone stand.

Q. And then you spoke to Mr. Simpson on that telephone, did you not, right from Mr. Roll's office?

A. Yes, I did.

Q. And was that the same Ray Simpson whom you had asked Mr. Roll to call for you?

A. Yes.

Q. And after you spoke to Mr. Simpson, you then sat down again alongside Mr. Roll's desk and the statement [fol. 571] was continued, was it not?

A. I talked with him over where I originally got the phone. It was interrupted once, and Mr. Roll talked with him a considerable time, then he was going to—I wasn't going to talk to him any more, and then I did talk with him again over on Mr. Roll's desk, that extension.

Q. Now, when you were through talking to Mr. Simpson, the same Ray Simpson whom you asked for, did you not turn to Mr. Roll and say, "You see, Mr. Roll, I cannot fill certain of the details of this crime and I just can't do it," and Mr. Roll then said to you, "Look. I am not going to ask you to fill any details whatsoever. If you want to tell me the story as you remember, I am giving you that privilege right now. If you want to, you can do so. If you don't want to answer my questions, you can refuse to give me any answers you want to on the grounds it would tend to incriminate you. [fol. 572] "I am giving you that privilege. Now, I am going to ask you some questions. If you feel you don't want to answer, you just say, I refuse to do so on the grounds it might incriminate me. Is that fair enough?"

To which you replied, "I will try to be as frank and thorough as possible, and under the circumstances I will try to reiterate what I know about this matter."

Didn't Mr. Roll say that to you and didn't you make that reply to Mr. Roll at that time?

A. Mr. Alexander, I didn't say anything of the kind, and we didn't have that kind of conversation.

Q. And your answer is no?

A. Absolutely.

Q. And then did Mr. Roll say to you, "I want you to understand this. Insofar as anything you say to me, it will be free and voluntary on your part. No promises of immunity or hope of reward offered to you. No threats or vio-

lence exercised upon you whatever. Do you understand that?''

Did Mr. Roll say that to you?

A. Certainly not.

Q. Now, at the time that Mr. Roll was talking to you, that young lady with the stenographic machine was to your right, [fol. 573] was she not?

A. She was to my left.

Q. To your left?

A. Yes.

Q. Was not Mr. Roll to your left?

A. Mr. Roll was at his desk. She was at the left. She and I were at the end of the desk. She was on my left. I was seated here (indicating). Dr. Crahan was seated behind me, and you were seated to my right, what would be to my right at the end of that desk, approximately.

Q. And while Mr. Roll was talking to you was she operating her stenographic machine?

A. Yes, sir.

Q. Do you know, Mr. Crooker, whether or not your conversation, your entire conversation in the office of Mr. Roll was recorded?

A. I have no idea whether you had a recording there or not, Mr. Alexander.

Q. Now, after the statement taken in our office, Mr. Crooker, did Dr. Crahan make a physical examination of you?

A. After I left Mr. Roll's office Sgt. Hooper and Lt. Armstrong, I believe, and I think Sgt. Gotch, took me upstairs to Dr. Crahan's office. When I got to Dr. Crahan's office, I was introduced to Dr. Crahan as an M. D.

[fol. 574] There was another man whose name I don't know in the room. The officers waited outside. The door was closed. Dr. Crahan gave a cursory view of my hands, gave a cursory view of my stomach, gave a cursory view of my arm.

That was the extent of his physical examination.

Q. Were you fully clothed at that time?

A. No, I took off my shirt for this.

Q. Now, when you——

A. That is not all that occurred, you understand that.

Q. Oh, well, then proceed, please.

A. I told Dr. Crahan——

Q. I am talking about the physical examination.

A. Yes, I am still talking about that, too.

Q. Go ahead.

A. I told Dr. Crahan that for about a week and a half—he asked me if I had anything wrong with my stomach. I told him for about a week or a week and a half I had not been eating very much at all, that I had some stomach upset; I didn't think that it was serious. He asked me if I had ulcers or anything of that sort. I told him no. He asked me if there was anything he could do for it, and I told him that I would appreciate having some milk; that was one thing [fol. 575] that I would like to take on my stomach when it was upset. He furnished me with milk.

Q. Now, you were able to see your body, were you not, in Dr. Crahan's office?

A. Yes.

Q. Did you have any bruises or injuries to your body at that time that you did not have at 1:30 p.m. on the 5th of July?

A. Well, now, Mr. Alexander, I—you understand I did not give myself an extensive physical examination; but just generally I would say no.

Q. You did have some injuries to the right arm, did you not?

A. No, sir.

Q. No scratches on your right arm?

A. No scratches, no.

Q. No bruises of any kind?

A. Well, on my right arm, and that to which the officers had referred—my skin is susceptible—if you take it like that and just rub your hand on that it sort of shows rashy; in that area of my arm by the elbow joint there was such a rashy mark.

Q. Was that there before 1:30 of July the 5th?

A. Before 1:30 of July the 5th?

Q. Yes—before the officers arrived at your home.

[fol. 576] A. Well, to answer the question, I had not been aware of the mark. The first time that it was pointed out to me was in Studio A, so it would have existed before there.

Q. You did not see any bruises or injuries of any kind on your body that were not there before Officers Jackson and Krueger arrived at your home on the 5th of July?

A. No, sir.

Q. Did you notice the area of your abdomen or stomach?

A. Well, I presume I noticed it, yes.

Q. Did you see any rashes or discolorations?

A. Not that I recall, no.

Mr. Alexander: Nothing further, if the Court please.

The Court: Any redirect?

Voir dire examination (Continued)

By Mr. Armstrong:

Q. Mr. Crooker, from the time the officers arrived at your house or your apartment until the time that this statement was made in Lt. Armstrong's office at 2:30 or 3:00 a.m., whatever time it was the next morning, can you give us an estimate of how many times you were photographed by [fol. 577] anyone?

A. How many times?

Q. Yes.

Mr. Alexander: Excuse me, I did not hear that question; would you read it, please?

(Question read.)

A. You understand there were pictures taken that I have seen and I have never been aware that they have been taken.

Q. Well, give us an estimate.

A. 100 times, 200 times, just countless times.

Q. In other words, you would say in excess of 100 times?

A. Yes.

Q. All these times you were photographed, on many occasions you were photographed when you were not aware that you were being photographed until you saw the flash bulbs from that?

A. As I recall, the police have a picture that I didn't know they took.

Q. Was that the last colored picture?

A. No—well, that one—I recall, for example, asking me if I had posed for that; I don't recall having posed for it. I

was referring to one—haven't I seen a picture that they took of me at the end of Lt. Armstrong's desk, back to, seated in that chair?

[fol. 578] Q. No, I don't believe that purported to be a picture of you. I am not certain—Mr. Alexander——

Mr. Alexander: It is one of the pictures in evidence here?

Mr. Armstrong: Yes.

Mr. Alexander: Let us look for that picture. Is this the picture you are referring to? (Handing photograph to Mr. Armstrong.) May we have the exhibit number, Mr. Armstrong, please?

Mr. Armstrong: It was Exhibit No. 19.

The Witness: That is the one I was referring to.

By Mr. Armstrong:

Q. Does that appear to you to be a picture of you?

A. I guess it is not. I had just seen the picture in passing. May I say that I have seen the picture, for example, of my hand over the back of a wooden chair such as I was sitting on in Lt. Armstrong's desk, for example, it would seem that my hand was spread out in that manner, and I was not aware that that picture had been taken.

Q. But the ones you were aware of were something in excess of 100, you would judge?

A. I would say so, yes.

Q. In the conversation you had in Mr. Roll's office at the time that Mr. Roll directed you to go to an extension phone, where was that phone located with reference to Mr. Roll's [fol. 579] officer, I mean to Mr. Roll's desk?

A. Well, I can't give you a north-south direction.

Q. I didn't mean that; was it in the same room?

A. Oh, yes, not twenty feet away from the desk.

Q. So at the time you were speaking with Mr. Simpson you recognized Mr. Simpson's voice?

A. Yes.

Q. And it was he?

A. Yes.

Q. During the time you were talking to Mr. Simpson could you see Mr. Roll?

A. Certainly.

Q. And was Mr. Roll listening—Strike that out.

Did Mr. Roll have his telephone to his ear in a listening position while you were talking to Mr. Simpson?

A. I know that during part of the time he did, but whether he did continuously during the entire conversation I can't be certain about that. He was within hearing distance of me.

Q. Of your side?

A. Oh, certainly, all the time.

Q. I am talking about the other side. But when you had made the statement to Mr. Simpson about force that had [fol. 580] been used upon you, Mr. Roll then cut into the conversation between you and your attorney, is that right?

A. When I—May I correct you: when I started to tell Mr. Simpson what had happened to me the night before—you see, I had asked Mr. Simpson, "How can I make them leave me alone"; and that is as far as I got describing what they had done to me. Then it was interrupted.

Q. I see, then Mr. Roll immediately cut into that conversation?

A. Yes.

Q. And spoke with Mr. Simpson?

A. Yes.

Q. And, of course, you could hear Mr. Roll's voice coming through the earpiece of his telephone, that is, you could hear Mr. Roll's voice coming through the earpiece of your telephone?

A. Yes.

Q. As well as hearing his voice in the room?

A. Yes.

Q. At the time that you were being interviewed in Mr. Roll's office, this group of officers that had been questioning you all day, or all afternoon and evening and in the morning of the day, were present in Mr. Roll's office, is that right, sir?

[fol. 581] A. The ones I have enumerated, yes.

Q. Specifically, this Officer Stambler and Sgt. Hooper?

A. Right, Lt. Armstrong, and I believe Sgt. Gotch.

Q. How about Officer Gravante, was he present?

A. I believe he was, Mr. Armstrong; in fact, he could have gone down in the car with me.

Q. All right, it was while you were trying to talk to Mr. Roll and Mr. Roll was talking to you, you did voice some complaint of what had happened the night before, and Sgt.

Hooper came up with the remark that, "I don't believe we hurt you," is that what you said?

A. Yes.

Q. And did you say to Sgt. Hooper in District Attorney Roll's presence, "You hit me last night"?

A. Yes, I said he had hit me, and I said, "You hit me twice in the stomach."

Q. And then Sgt. Hooper—at that point who was the next person that spoke after you said, "You hit me in the stomach twice"?

A. That is a very difficult question.

Q. In any event, did Sgt. Hooper make a reply?

A. Oh, yes. He and Mr. Roll conducted a conversation at that point. I mean, they were talking back and forth.

[fol. 582] Q. Did Sgt. Hooper reply to that particular accusation you have just made except to say, "I don't think we hurt you,"—did he reply to that when you said, "You hit me in the stomach twice"?

A. Twice?

[fol. 583] Q. Yes.

A. Twice he replied it, I say.

Q. All right. He made the statement twice, I don't believe we heard you.

A. Yes.

Q. At that point did District Attorney Roll question Sgt. Hooper about whether or not this was true?

A. No.

Q. He didn't say anything to Sgt. Hooper about, "Did you hit this man"?

A. No, he did not.

Q. Did Mr. Alexander ask Sgt. Hooper if he had struck you?

A. No. In fact, Mr. Alexander hadn't said anything to this point, and didn't say anything until a long time afterward.

Q. Did District Attorney Roll, if he didn't ask him the truth of it, did he in any way remonstrate with him about this?

A. No, nothing was said about it beyond what Sgt. Hooper saying, "I don't think we hurt you."

Q. All right. Now, as to Mr. Alexander's questions to you of times that you had fear or were afraid; I want to

direct your attention to the time you were in the Central Station and specifically to the time just before you left Central Station, did you at that time have a brief conversation [fol. 584] with Lt. Armstrong?

A. Yes.

Q. Would you give us the substance of that conversation?

A. I had asked Lt. Armstrong if—I think I said this before, yesterday, if the officers were going to use force to make me answer their questions before I could talk to an attorney and have an attorney; to which he replied, "This is a free country," and I asked him again, and he said—yes, I said this yesterday, too, I recall—"You don't have to say anything that you don't want to." And I still talked with him about the same point, and he said at the conclusion of that conversation with him, "All right, we have brought you down here and given you a chance to talk; and I just want you to know that from here we are going to take you down by the sea and there is no turning back from here. This is the last chance you get to go along with us."

Q. Did he elaborate what he meant by that?

A. No, he did not.

Q. Did those remarks of Lt. Armstrong make you feel apprehensive?

A. Mr. Armstrong, I was apprehensive during all of this interrogation. I didn't know police methods. I didn't even know where I was going to go from one time to the next.

Q. Specifically at that time did you feel an increase in [fol. 585] apprehension, or a feeling of fear at that time from what he said?

A. Well, of course.

Mr. Armstrong: I have nothing further at this time.

The Court: Any further cross examination?

Re-cross examination.

By Mr. Alexander:

Q. Mr. Crooker, do you recall when you got on that telephone to speak to Mr. Simpson, is it not a fact Mr. Simpson said something to you, and did you not say, "Well, I am as well as can be expected. I have been in custody since yesterday about noon, and I, of course, feel that I need—would

like to have counsel at the earliest opportunity. I don't have much resources, and, of course, at the time that they take me before the Court I understand that I have recourse to a public defender. However, if I could get an attorney at this point, I am also given to understand that I could have that representation at this time; and, of course, I have what I feel a very reasonable interest in having that representation at this time. And I would like to ask you personally if you were at all inclined to take the job. And also I would like to ask you, if you will, if you would make a recommendation to me.

Isn't that the conversation that you had with Mr. Simpson up to that point?

[fol. 586] A. That is not. There are parts of that conversation, parts of the words, for example, that I told Mr. Simpson; asked him if he would represent me; if he did not, would he recommend someone to me. Those words you are putting in, "recommend," for example—would he recommend —

Q. Do you deny that you made that statement?

A. That conversation you just read?

Q. Yes —

A. Certainly, Mr. Alexander.

Q. Very well. Then, did Mr. Roll say to you, "Don't hang up when you get through, let me talk to him."

Then did you say, "No," and you coughed, "Mr. Roll will talk with you. I will go and get things," and you coughed some more. And then you said to Mr. Simpson, "Can I ask you this, am I obligated to proceed with the questioning? Do they have the right to use any physical force to have me continue with the questioning? Will I have difficulty in court substantiating the fact that they have, if I am alone with them?"

"I see—well, probably they will attempt to continue with the questions and probably to avoid the force I will have to talk with them."

Did you say that to Mr. Simpson?

A. I did not.

[fol. 587] Q. All right. And after you hung up —

A. May I say what I did say?

Q. Will you answer the questions, please? You deny you did that—you deny that you had that conversation, is that right?

A. Yes.

Q. After you hung up did I then say, "I would like to have one thing cleared up; what he told his counsel, we will use force, we will force him or compel him or use force on him, that is absolutely untrue." Did I say that?

A. You certainly did not in my presence.

Q. Then did you say in reply to that, "Sir, last night he did it. I didn't want to answer (pointing to Mr. Hooper);" Did that occur?

A. Would you repeat that?

Q. After I made the statement, did you say, sir, "Last night he did it; I didn't want to answer—(pointing to Mr. Hooper." Did that occur, Mr. Crooker?

A. No, it did not.

Q. Did Mr. Hooper say, "Now, wait a minute. There has been no force whatever used on you other than accusation." And then did you say, "You hit me twice in the stomach," is that correct?

A. I said you hit me twice in the stomach. What you have read previous to that I have never heard in that office.

[fol. 588] Q. You never heard it and you did not make the statement that I just read to you other than, "You hit me twice in the stomach," is that right?

A. I not only did not hear it, it was not said.

Q. What you said, "You hit me twice in the stomach," you have a definite recollection of saying that?

A. When I answered—when that was said, yes.

Q. Then did Hooper say to you, "If that hurts, then you have been hurt nothing but being accused of committing murder, which you admitted and showed us how you did. There has been no force and will be no force, and as Mr. Roll has explained to you here, you won't have to answer no questions you don't want to answer."

Then did you say, "Sir, about the knife, I don't know where that knife is"; did that occur in that office?

A. No, it did not.

Mr. Alexander: I have nothing further, your Honor.

Mr. Armstrong: No questions.

Juryman Hoyt: Could I ask a question?

The Court: Mr. Hoyt.

Juryman Hoyt: I'd like to clear up just one point, and that is ——

The Court: Just ask a question, please.

[fol. 589] Juryman Hoyt: When, in the office of Lt. Armstrong, you were struck by Officer Hooper and Mr. Gravante came alongside your chair, and I think you testified you said something to the effect, "What do I have to do to make them stop——"?

A. Yes.

Q. And he said what?

A. Well, now, I want to recall exactly how that conversation went. He told me first that Officer—Sgt. Hooper meant exactly what he said. Then I asked him what he wanted me to do or what he wanted me to say. He told me that he wanted me to tell him what happened. And I said, "But what do you want me to say?" And he said he wanted me to put it in my own words. And I said to him, "Well, I will say anything that you want me to say if you will make them leave me alone."

Juryman Hoyt: Did anybody say anything, the other officers; the other officers were still in the room at that point?

A. No, it is my impression, the way I am seated, I cannot be sure, it was in back of me, who was to this side and who was to the other side; that is the office I was in.

The Court: Just what did you see in the room?

The Witness: I did not see any officer by Officer Gravante.

[fol. 590] Juryman Hoyt: Where was Sgt. Hooper at that time?

The Witness: I don't know. May I show you how I was seated at that time?

[fols. 591-592] Juryman Hoyt: Please.

The Witness: I was seated at the end of the desk. The first thing I had a conscious, visual awareness of Officer Gravante, he was, there was another chair right beside me toward these windows. This seems out of proportion to me because it is nearer the windows. So he is around on that side, and I, in order to talk with him, faced in that direction at that time, so I don't see this area of the office.

Juryman Hoyt: At the time that you say Sgt. Hooper

struck you there were other officers in the room; you were aware of the presence of other officers in the room at that time?

A. No, and if I may describe my position, then, I am seated at the end of the desk when Officer Hooper, the officer who was sitting in the commander's chair, he jumped out. There was a chair right beside me. He stopped there when he hit me on my leg. Then he crossed in front of me and turned his back—now his back is now to this doorway, and I—he is covering that side of me, do you understand? And that is the position from which he hit me in the stomach. So I don't know who was in the room.

Juryman Hoyt: Now, Mr. Gravante brought you the yellow pad and pen and ink?

A. I believe it was a pad, yes.

Juryman Hoyt: And you changed your position to be [fol. 593] seated at the commander's desk?

A. That is correct.

Juryman Hoyt: Now, did Mr. Gravante give you any indication of the substance of what you were to write about?

A. No,—with the exception that I had made.

Juryman Hoyt: And he was silent throughout the entire period of time you were writing exhibit 18?

The Witness: No, we exchanged some words. For example, I was very, very tired, exhausted, at this point.

Mr. Alexander: If the Court please, I move that that be stricken out and that the witness be directed to answer the question.

The Court: It may be stricken out.

The Witness: We talked about that—I asked him if I could have coffee at one point.

Juryman Hoyt: Did you tell him what you were writing before you started to write, what you were going to write before you started to write?

A. No, as I finished each page he took the page.

Juryman Hoyt: Was that the first time he was aware of what you were writing or what you intended to write on that particular page?

A. That is true.

Juryman Hoyt: Thank you.

The Court: That's all.

(Witness leaves stand.)

[fol. 594] The Court: Your next witness.

Mr. Armstrong: Mr. Simpson, please.

RAYMOND C. SIMPSON, produced as a witness on behalf of the defendant, after being duly sworn, was examined and testified as follows:

The Clerk: State your name, please.

The Witness: Raymond C. Simpson.

Voir dire examination.

By Mr. Armstrong:

Q. What is your business or occupation, Mr. Simpson?

A. Attorney-at-Law.

Q. Were you an attorney on the sixth day of July, 1955?

A. Yes, I was.

Q. And you are licensed to practice in the State of California, are you?

A. Yes, I am.

Q. Do you know the defendant, John Crooker, seated here at my right?

A. I do.

Q. Could you tell me what the basis of your association with him is, how you came to know Mr. Crooker?

A. Two years ago while teaching at Pepperdine College he was a student of mine, and thereafter a social acquaint-[fol. 595] ance when he was in law school.

Q. As far as this particular case is concerned, People versus Crooker, did you have an occasion subsequent to July 6th to represent Mr. Crooker at one time in this matter?

A. Yes, I did.

Q. Directing your attention to the afternoon of July 6th, do you recall receiving a telephone call in your office from a person who identified himself as Ernie Roll?

A. Yes, I do.

Q. Can you tell me approximately what time of the day that was?

A. To the best of my recollection, it would be approximately 4:00 o'clock in the afternoon.

Q. In this conversation with Mr. Roll, could you give me just the substance of what was said—I take it that is the first person you spoke to, from your last answer, that that was Mr. Roll?

A. No, the first person I spoke to was a lady who identified herself as an operator calling on behalf of Mr. Roll and asking to speak to me.

Q. All right.

A. The second voice was that of a gentleman who identified himself as Ernie Roll. He explained to me in substance that he had a young man in the office who claimed he had been a student of mine and knew me and wanted to com-[fol. 596] municate with me, and his name was John Crooker, and he inquired as to whether I knew John Crooker. My answer was that I did, and I related in substance what I have just stated here.

Then the conversation proceeded by having Mr. Roll say, "He is here; you may now talk to him."

I then commenced the conversation with John Crooker, a few social amenities, and then he proceeded to state the nature of his difficulty, and then he asked the question, "How can I stop them from using force to make me answer questions," at which point Mr. Roll, or the voice identified as his, interrupted and said, "Simpson, you know better than that, no force has been used by this office whatsoever, and Crooker knows better than that."

Then we had further conversation. By "we" I am referring to John Crooker and myself at the same time, during which something was said about the absence of funds. Mr. Roll then pointed out that the funds or the money he had there in his wallet could not be released because it might very well be used as evidence. We then discussed when I could see John Crooker. I was told that he was going to be transported to the West Los Angeles Jail. That I could see him that evening. I don't recall at the present moment anything further, even though there were other tid-bits of conversation.

Q. Do you remember at any time that you were speaking [fol. 597] to the man who identified himself as Ernie Roll, as to whether he informed you at that time they were preparing to take a statement from Mr. Crooker?

A. My recollection is that he informed me a statement had been taken from Mr. Crooker.

Q. And in that conversation you were not invited by the person who identified himself as Mr. Roll to come down and participate in a conference that was then going on, is that correct?

A. No, I was not.

[fol. 598] Q. And you were informed, according to your last testimony, that you could first see Mr. Crooker from the point of time of the conversation that evening at West Los Angeles, is that correct?

A. That is correct.

Q. And did you, at the opportunity that was announced to you, see Mr. Crooker at the first available time?

A. Yes, I did.

Q. And the time you saw him was the first time that you had been informed by the person who identified himself as Ernie Roll that you could see your client, is that right?

A. Yes.

Mr. Armstrong: You may cross examine.

Cross-examination.

By Mr. Alexander:

Q. Mr. Simpson, in the conversation with the defendant Crooker, did Crooker ask you to come down to the District Attorney's office?

A. My recollection is that he did ask me to represent him and to come to him as soon as I could.

Q. And did you decline to come to the District Attorney's office?

A. No, I did not.

[fol. 599] Q. Were you under the impression that you could not come to the District Attorney's office at that time?

A. I was under the impression that the first convenient time for me to see him, as stated by Mr. Roll, would be that evening, since he was going to then be transported to West

Los Angeles and would not arrive there until between 7:00 and 8:00 o'clock that evening.

Q. Let me ask you, Mr. Simpson, whether at the time Mr. Roll called you this wasn't the conversation.

"Mr. Roll: Simpson?"

And you said, "Yes."

And Mr. Roll said, "This is Ernie Roll."

And you said, "Yes, Mr. Roll, how are you?"

And Mr. Roll said, "Pretty good. I am sitting here with a young man that has been placed under arrest in connection with a murder up in Bel Air, John Russell Crooker, I think that is the way he pronounces it."

Mr. Armstrong: Just a moment. May we approach the bench, your Honor?

The Court: You may. This would be a good time for the morning recess.

Ladies and gentlemen, do not discuss the case among yourselves nor talk to anyone about it nor form any opinions or conclusions until the matter is finally submitted to you. We will take a ten-minute recess.

(The jury leaves the courtroom and the following proceed-
[fol. 600] ings were had at the bench and out of the presence of the jury.

Mr. Armstrong: Your Honor, it would seem that what at first I thought was just highly improper conduct is developing into criminal conduct on the part of this District Attorney's office, and if the basis of his impeaching the question is an illicitly and illegally recorded conversation between a man and his attorney, why, I object to any use of such impeaching document or attempted use of them in the court, and so I feel that reading this before the jury is highly prejudicial. I am apalled that it was even done, and to put it even—even if there is no testimony about it, even if they don't attempt to get up and say that they have done this improper and, in my mind, immoral thing, they still have created an irrevokable impression in front of the jury by showing them that it was recorded, and the jurors may not realize how bad this act of theirs was, and so I don't want this type of questioning to go on by Mr. Alexander.

Mr. Alexander: If the Court please, those are more wild motives attributed to us. Counsel has opened the door by

asking this witness a conversation he had with Mr Roll and Mr. Crooker on the telephone. Now, certainly we have got the right to show what the actual conversation was on cross examination.

[fol. 601] I am not attempting to impeach him at this time. I am trying to ask him whether that was the correct conversation that he had, the very same conversation that counsel alluded to in his direct examination. That is all we are doing, your Honor.

Mr. Armstrong: If he wants to ask him questions and answers, that is one thing, but the jury can see that he has a manuscript in front of him, and he is reading it——

The Court: (Interrupting) Let me see if I understand your point, Mr. Armstrong. Are you claiming there is a violation of the attorney-client privilege?

Mr. Armstrong: Absolutely.

The Court: Haven't you waived that privilege by putting the attorney on the stand and questioning him about the conversation with his client?

Mr. Armstrong: No, your Honor. I am not claiming an attorney-client privilege at this point. I am claiming that the attorney-client privilege was violated in Mr. Roll's office, and that they can't use that illegally obtained information in court in any way.

The Court: We are now concerned with the testimony of this witness.

Mr. Armstrong: Right.

The Court: He has, on direct examination, testified to conversations with his client. Therefore, there no longer is this [fol. 602] attorney-client privilege.

Mr. Armstrong: That is true. That is my understanding.

The Court: Having testified to that conversation on direct examination, may not the District Attorney cross examine on that same subject with regard to that same conversation?

Mr. Armstrong: Yes, your Honor, he may properly cross examine. I am objecting to the method, and I am objecting to the use of this particular document in view of the jury, as to the reading—obviously reading to the jury. If he wants to ask him questions and answers, that is one thing.

The Court: You are referring to a document. However,

there is no document in evidence. I do not know what Mr. Alexander is using for the purpose of notes or to refresh his recollection. He is referring to apparently papers or notes of some kind in his possession, but neither the court nor adverse counsel have the right to examine the notes which an attorney uses in the course of his interrogation of witnesses.

Mr. Armstrong: That is right.

The Court: I don't believe I can ask the attorney what notes he is using or investigative reports he may have in his hand as he interrogates witnesses. I haven't done that with you and I don't believe I can do it with the District [fol. 603] Attorney.

Mr. Armstrong: I see the Court's point, but you see, this is the assignment of misconduct, and I make no bones about claiming that it is misconduct on the part of the District Attorney that he is obviously—he has alluded to, and what he is not doing directly, he has done by insinuation in his previous questions. He has alluded to a stenographic report. He has questioned the defendant on the basis of this so-called word-for-word report that was taken down.

Now, in the presence of the jury, and obviously before the jury, my point is simply that he is misconducting himself in having made this insinuation, referring to the same set of notes he had in these word-for-word questions which are obviously being read by him to a witness that he had no way of contemplating could be here, and I feel that he is misconducting himself in so doing.

The Court: The Court sees no evidence of misconduct. Your objection is overruled.

(The following proceedings were had in open court within the hearing of the jury:)

The Court: The jury is present. You may continue your examination, Mr. Alexander.

Mr. Alexander: I don't know if the last question was answered. Do you have it with you, Mr. Reporter?

[fol. 604] Mr. Armstrong: I interrupted you, Mr. Alexander, in the midst of a question, and went to the bench.

Mr. Alexander: How far did I get? I will start over again.

Cross-examination (Continued).

By Mr. Alexander:

Q. Mr. Simpson, directing your attention to the conversation that you have testified to with Mr. Roll and Mr. Crooker, when you received this call on the afternoon of the 6th of July, is it not a fact that Mr. Roll said to you, "Simpson?" And you said, "Yes."

Mr. Roll said, "This is Ernie Roll."

And you said, "Yes, Mr. Roll, how are you?"

And Roll said, "Pretty good. I am sitting here with a young man that has been placed under arrest in connection with a murder up in Bel Air, John Russell Crooker. I think that is the way he pronounces it."

And you said, "Oh, yeah, a former student of mine."

Did you have that conversation with Mr. Roll up to that point at that time?

A. I could not, under oath, say that I used those exact words, or that Mr. Roll used those exact words, but the substance of it is correct.

Q. And then did Mr. Roll say, "What?"

[fol. 605] And you said, "He was a former student of mine."

And then Mr. Roll said, "Yes. He has asked me—we have tried to take his statement. He said he wanted to talk to you. I asked him if you'd represent him. He said that he would like to talk to you in connection with that matter."

And you said, "Yes."

And Roll said, "And he's here and if you want to talk to him, why, I'll put him on the phone and you can talk to him."

And you said, "Thank you kindly."

Was that the substance of the conversation up to that point?

A. It sounds quite correct, yes.

Q. Then Crooker said to you: "Hello, Mr. Simpson?"

And you made some reply and then Crooker said, "Well, I am as well as can be expected. I have been in custody since yesterday about noon. And I, of course, feel that I

need—would like to have counsel at the earliest opportunity. I don't have much resources, and, of course, at the time that they take me before the court I understand that I have recourse to a public defender.

[fol. 606] "However, if I could get an attorney at this point, I am also given to understand that I could have that representation at this time. And, of course, I have what I feel a very reasonable interest in having that representation at this time. And I would like to ask you personally if you are at all inclined to take the job, and also I would like to ask you if you will—if you would make a recommendation to me."

Did Crooker say that to you, in substance, at that time?

A. Was the phrase you used there, "If you will, will you make a recommendation"?

Q. "And also I would like to ask you if you will—if you would make a recommendation to me."

A. I recall his asking me to represent him. I don't recall the portion pertaining to a recommendation. I don't quite follow the substance of it.

Q. Would you want me to repeat it to you, Mr. Simpson?

A. No, I don't follow that he would ask me to make a recommendation, unless he said, "If you can't do it, will you make a recommendation".

Q. In substance, then, would you say that would be it, with the exception that you do not recall him asking you to make a recommendation, is that it?

A. To the best of my memory, yes.

Q. And then did Crooker say, "Now——" and he coughed [fol. 607] —"Mr. Roll will talk with you. I'll go and get things——" (and he coughed some more), and then Mr. Crooker said, "Can I ask you this: am I obligated to proceed with the questioning? Do they have the right to use any physical force to have me continue with the questioning? Will I have difficulty in court substantiating the fact that they have, if I am alone with them?"

And you said something, and he said, "I see. Well, probably they will attempt to continue with the questioning, and probably to avoid the force I will have to talk with them."

Did Crooker say that to you, in substance?

A. In substance, I believe he did.

Q. And then did Roll get on the wire and say, "Let me tell you something right now. I just heard what he said. He's sitting here on the phone. There's going to be—I made this statement to him, and it's in the regard that in so far as he is concerned he didn't have to answer any single question whatsoever. Now, isn't that correct? Isn't that correct now, Crooker? Isn't that correct?"

Do you recall Roll saying that, in substance?

A. In substance, yes.

Q. And Crooker said, "Pardon?" And then Roll repeated, "Isn't that correct? Didn't I just tell you that you didn't have to answer any questions if you didn't want to? Just answer yes or no." Did Roll say that in substance?

[fol. 608] A. In substance, yes.

Q. Then did Crooker say, "He just wants me to answer him if I have to answer any questions that he asked me. And I told the officers and I reiterated all the way along the line that I didn't want to answer anything, if possible, without counsel, but I don't know. What in the world is going on?"

"Now, the point is they are probably going to force me to talk with them." Did Crooker say that?

A. To the best of my recollection, yes.

Q. And then did Roll say, "Just a moment now. You know better than that. Wait a minute. Now, hold on a minute. Let me say something. This man came into my office at 2:30. He has been seated here. I asked him a few questions and he said he wanted counsel. I said, 'Do you have anyone in mind?' And he said, 'I don't have money to hire counsel.'

"'I explained to him about the public defender being appointed if he didn't have money to hire counsel. I gave him the yellow phone book to select anybody he wanted; that you think will represent you. He said that he'd like to have Mr. Simpson and I had my secretary put the phone call in and we stopped any further questioning. You know me well enough and I think—he doesn't know me, but there—anything that he says is going to be free and voluntary. He doesn't have to answer a single question if he doesn't

[fol. 609] want to. Now, that is his privilege. Now, I'll say this to you, that the officers have taken a full and complete statement from him. It is in his own handwriting and it's laying right in front of me. Now, if he doesn't want to go any further, I don't care. Now, that is his privilege. All he's got to do is say he doesn't want to talk to me and we'll get out of the room and he'll be booked in jail and will be arraigned tomorrow morning. Now, it's up to him. Let me ask you this. Are you going to represent him or not?"

Did Mr. Roll say that, in substance?

A. Not the exact words to my recollection, but in substance, yes.

Q. Then you said something, and then he asked you "You will represent him?"

And then Mr. Roll said, "All right. That's all right. All he's got to do, if he just wants to refuse to answer on the grounds it's going to tend to incriminate him he can do so and we'll stop it. You can understand my position here."

Did he say that to you, in substance?

A. In substance, he may have. I don't recall his specific language.

Q. But in substance he may have said that to you?

A. He may have.

Q. Then did Crooker say, "I am still on the line, Mr. [fol. 610] Roll," and Roll said, "All right. Are you through?"

And Crooker said, "Well, I'd like to talk with him a moment, if I may."

And Roll said, "Well, let's make it fast. We have been on here quite a while."

And then Crooker said, "Mr. Simpson, I have told them as much as I know about this matter, and I have tried to express myself as well as possible. There are holes that I cannot fill and they insist that I fill them. I just don't know.

You said something, and he said, "All right. Thank you, Good bye."

Is that the substance of the conversation?

A. What you have related, to the best of my recollection, was included in our conversation, in addition to the other matters I mentioned here on direct.

Mr. Alexander: I have nothing further, your Honor.

Voir dire examination (Continued).

By Mr. Armstrong:

Q. Now Mr. Simpson, as far as your answers to Mr. Alexander's questions, when he has asked you if Mr. Crooker said certain things, and you have answered, in substance, it isn't the intent of your testimony to say that you remember that this was Mr. Crooker's phraseology, is it?

A. No, it isn't.

[fol. 611] Q. And as far as your recollection is concerned, you do not remember his having spoken those precise words?

A. No, I do not.

Q. And the same would apply to the things that are attributed to what Mr. Roll was supposed to have said?

A. That is correct.

Q. Now, after this matter of Mr. Roll saying that "I have explained to the defendant that he can refuse to answer if he chooses and that he can assert the privilege against self-incrimination", you answered, in answer to Mr. Alexander's question, in substance he may have said that.

I take it that you don't have a recollection of his having said that particular—expressed that particular thought, is that right?

A. No. In view of the time interval from July 6 to now, I do not recall that particular thing. I do answer, and repeat my answer, he may have said it.

Q. All right. Now, as to the time that you were talking to Mr. Crooker, your recollection is that that was sometime around 4:00 o'clock in the afternoon?

A. That is correct.

Q. And you were advised that the first opportunity that you could have to see Mr. Crooker would be about 7:0 o'clock in the evening, is that right?

A. In all fairness, I do not recall, as I stated on direct, [fol. 612] the exact nature of that, but I would say and recall that I was told that I could see him between 7:00 and

8:00 o'clock at the West Los Angeles County jail because he was being transported to there, and that would probably be the first convenient moment to see him.

Q. I see. Then did you subsequently avail yourself of that opportunity?

A. I did.

Q. And you saw him at the West Los Angeles jail?

A. I did.

Q. Then when you saw Mr. Crooker at the West Los Angeles jail, after you had exchanged greetings, what were the first words that Mr. Crooker said to you?

Mr. Alexander: To which I will object as immaterial.

The Court: Read that question again, Mr. Reporter.

(Reporter reads the question.)

The Court: Objection sustained.

Mr. Armstrong: May I be heard on the point a moment, your Honor?

The Court: The objection is sustained.

Mr. Armstrong: Nothing further.

Re-cross examination.

By Mr. Alexander:

Q. Mr. Simpson, when you say about 4:00 o'clock, you are not sure of that time, are you, that you received that [fol. 613] call from Mr. Roll?

A. The answer to your question is in refreshing my memory from notes made shortly thereafter, which would indicate that it was very close to 4:00 o'clock.

Q. And when you testified on direct examination as to the conversation you had with Mr. Roll, was it your intent to convey the impression that those were the exact words?

A. No, the substance of my understanding.

Q. What you believe is the substance of the conversation?

A. Correct.

Mr. Alexander: I have nothing further, your Honor.

Mr. Armstrong: That is all.

The Court: That is all.

Mr. Armstrong: Your Honor, I expect to have nothing further from this witness, and he having completed his testi-

money, would there be any objection to his remaining in the court room?

The Court: No objection.

Mr. Armstrong: May I confer for a moment, your Honor?

(Armstrong confers with the defendant.)

Mr. Armstrong: Your Honor, I would like permission to recall Mr. Crooker for just one additional point on re-direct.

The Court: You may do so.

[fol. 614] JOHN RUSSELL CROOKER, JR., having been previously sworn, resumed the stand and further testified as follows:

The Clerk: You have already been sworn. Be seated and state your name again.

The Witness: John Crooker.

Voir dire examination (Continued).

By Mr. Armstrong:

Q. Mr. Crooker, directing your attention to the time that you were in District Attorney Roll's office, at any time while you were in that office did you have a conversation with Mr. Alexander?

A. Yes, sir.

Q. And were other people—were other persons within hearing distance of that conversation, or was it a private conversation with Mr. Alexander?

A. Well, after they had completed my going over the statement, they were going to open the door, and as later happened the reporters were out there and they all came in at that time, and they all had congregated at the door. I told Mr. Alexander that I would like to talk with either him or with Mr. Roll, and Mr. Alexander said that I could talk with him anytime, and I told him that I would like to talk with one of them at that time, so he took me to the other side of the room and——

[fol. 615] Q. (Interrupting) Just stop there. When he took you to the other side of the room, were there any other parties there with you or with Mr. Alexander?

A. With us? No.

Q. In other words, as far as the parties present in this conversation was concerned, it was you and Mr. Alexander?

A. Yes.

Q. Now, would you give us the substance of that conversation?

A. I told Mr. Alexander that since my interrogation had started, that I had repeatedly asked for an attorney, that I would like to have one with me, and that it had been refused, and that the officers, I felt, had forced me to answer the questions and to say what I had already said, and that I felt that the same thing had happened right there in Mr. Roll's office, and that I didn't know what I could do about it, but at this point I implored him to make the officers leave me alone at this point.

Q. All right, and rather than to say you implored him, which is saying how you asked him, if you can give us the substance of what was said to him.

A. That was one of my words. I said, "Mr. Alexander, I implore you to make them leave me alone at this point. I want to have an attorney with me."

Q. And what did Mr. Alexander reply?

[fol. 616] A. He said that they were all through with me, that he was all through with me. That is all that they were going to do to me.

Mr. Armstrong: That is all. You may cross examine.

Re-cross examination.

By Mr. Alexander:

Q. Just a moment. Is that the entire conversation you had with me at that time, Mr. Crooker?

A. As I recall it, yes.

Q. Do you remember asking me, "What is going to happen now"? And I telling you, "You will be prosecuted."?

A. No, sir.

Q. Do you remember saying to me, "I am scared," and I said to you, "You have a right to be scared." Do you recall that?

A. I do recall that, yes.

Q. And do you remember repeating to me, "I am scared." And I said to you again, "You have a right to be scared—"

A. No.

Q. Just a minute. —"if I had murdered a mother of three children as you have, I, too, would be scared." Did I not say that to you?

A. No, you did not, Mr. Alexander.

Q. There is just one question I would like to ask on cross examination that I failed to ask before, if the Court please.

[fol. 617] The Court: You may.

By Mr. Alexander:

Q. After you were returned from the McCauley residence and brought back to the West Los Angeles jail and had eaten, you were brought to the jailer, were you not, in that stationhouse?

[fol. 618] A. After I had eaten?

Q. Yes.

A. Yes.

Q. Did not the jailer say to you at that time, "You can now call an attorney or a friend—" rather, "Do you want to call an attorney or any friends?" And did you reply, "No"?

A. He most certainly did not, nor did I.

Mr. Alexander: I have nothing further, your Honor.

Mr. Armstrong: That is all. Your Honor, this completes the voir dire examination on behalf of the defense at this time.

The Court: Will there be any testimony for the People on voir dire examination?

Mr. Alexander: Yes, your Honor, there will be some rebuttal to that.

The Court: Very well, we will proceed.

Mr. Alexander: Lt. Armstrong, please.

GROVER H. ARMSTRONG, called as a witness on behalf of the People, having been previously sworn, testified further, as follows:

The Court: You have already been sworn. Just be seated and state your name.

The Witness: Grover H. Armstrong.

[fol. 619] Voir dire examination.

By Mr. Alexander:

Q. Mr. Armstrong, at the premises where the defendant was arrested, did he tell you at that time, that is, the afternoon of July 5th, that he did not want to talk until he could see an attorney?

A. No, sir.

Q. Did you, at the Central Station, in or near—by the way, do you know a Studio A in that Central Station? Is there such a place?

A. Not that I know of.

Q. There is a photographic room?

A. There is a photographic room.

Q. Did you ask the defendant what he thought about all this, and did the defendant in substance say that he had been hurt a great deal through the press, through the police activities, his college work, and his Bar Association—his Bar examination, rather, and you said, you realized that, and did he then say that if he could have an attorney he would be willing and anxious to talk about anything that happened?

A. No, sir.

Q. Now, in the polygraph room—did you go into the polygraph room at any time?

A. Yes.

Q. While you were there, did this defendant tell you that [fol. 620] he didn't mind taking the test but that he wanted an attorney with him?

A. No, sir.

Q. Coming back to the West Los Angeles Police Station, after you left the Crime Laboratory, did Sgt. Hooper in

your presence, in your office, jump from his chair over to the defendant, and banged his hand down on the defendant's knee?

Was that done in your presence?

A. No, sir.

Q. Did the defendant then say, "There, you see." And you said, "What do you mean?" And did the defendant say, "They are going to use force to make me answer their questions before I have an attorney."

Was anything like that said by this defendant or by you?

A. No, sir.

Q. When he was brought back to the West Los Angeles Station, could you describe his physical appearance?

A. Well, he looked very much like he did when I first saw him, Mr. Alexander. He was dressed in a gray suit, a clean white shirt on, a tie such as he is wearing now, his hair was combed.

Q. Lt. Armstrong, directing your attention to People's Exhibit 22, were you present when the defendant posed for [fol. 621] that picture (showing same to witness)?

A. (Examining same) Yes, sir, I was in the hallway by the photographic room. I saw this.

Q. And you saw that picture being taken?

A. Yes.

Q. Is this a true and accurate representation of what the defendant looked like at the time this photograph was taken?

A. It is, yes, sir.

Mr. Alexander: I offer this in evidence at this time, if the Court please.

Mr. Armstrong: To which the defense will object, your Honor, on the basis that this is not proper identification of the photograph. There are marks on this photograph that I have no way of knowing whether the negatives have been retouched or whether the locations are true that the photograph purports to portray, and the general statement by the witness that this is a photograph of the defendant doesn't qualify this type of photograph in a blown-up enlargement. I don't know about questions of distortion in the process of enlargement. I don't know what film was used. There is a proper way to identify a photograph.

The Court: (Examining photograph) I will have to sustain the objection on the ground of lack of foundation.

[fol. 622] Mr. Alexander: Very well, your Honor. I think that is about all your Honor, from this witness.

The Court. Any cross examination?

Cross-examination.

By Mr. Armstrong:

Q. Lt. Armstrong, in answer to the District Attorney's question on whether or not Mr. Crooker had a conversation with you to the effect that he had been hurt by what had happened so far as the publicity would be damaging to him, as far as his friends were concerned, and as far as his relations at Pepperdine College were concerned, as far as his prospects on the Bar examinations were concerned, and if he had an attorney he would talk—he would discuss anything that you wanted to discuss with him, your answer is that you didn't recall that conversation.

May I direct your attention to that and ask you if you remember any part of it. Do you remember the first part of it, about him saying that he had been hurt about the happening so far?

A. No, sir.

Q. You don't have any recollection of that portion of the conversation?

A. No, I don't.

Q. Lt. Armstrong, do you recognize People's Exhibit 23 [fol. 623] there on the board as being a representation of a portion of the West Los Angeles Police Station?

A. Yes, I do.

Q. With your office being over there to the right?

A. That is correct.

Q. And that is your office, and that is where this questioning took place, is that right?

A. That's right.

Q. Lieutenant, do you have sound recording equipment in your office?

A. I do.

Q. And at the time this questioning was going on with Mr. Crooker, did you employ this sound recording?

A. No, sir.
Q. Why did you not employ it?

Mr. Alexander: Immaterial, if the Court please.
The Court: Objection sustained.

By Mr. Armstrong:

Q. How long have you been a police officer, Lt. Armstrong?
A. Twenty years next July.
Q. And in your interrogation of suspects in the Detective Bureau, is it not customary to record the interrogation?

Mr. Alexander: Objection, if the Court please.
The Court: The objection is sustained.

[fol. 624] By Mr. Armstrong:

Q. You answered that you did have sound equipment in the office?
A. Yes, sir.
Q. May I ask you what the equipment—what the purpose of the equipment is in your office?

Mr. Alexander: Immaterial, if the Court please. We object.
The Court: The objection is sustained.
Mr. Armstrong: Nothing further.
Mr. Alexander: Thank you.
Inspector Kerr.

Henry W. Kerr, recalled as a witness in behalf of the People, having been previously sworn, resumed the stand and testified further, as follows:

The Court: You have already been sworn. Be seated and state your name again.
The Witness: Henry W. Kerr, K-e-r-r.

Voir dire examination.

By Mr. Alexander:

Q. Inspector Kerr, do you recall the occasion when the defendant had started to write People's Exhibit 18?

A. I wasn't in the room at the time.

[fol. 625] Q. Were you in the vicinity of Lt. Armstrong's office?

A. Yes, I was.

Mr. Armstrong: I will object to this as being vague.

The Court: Yes, the objection is sustained. If he didn't see it written, he couldn't very well tell where it was at the time.

By Mr. Alexander:

Q. All right. Inspector Kerr, were you in the West Los Angeles Police Station at the time People's Exhibit 18 was completed?

Mr. Armstrong: I will object to that as assuming a fact not in evidence, and also being vague, without proper foundation.

Q. Well, we will ask another question. Did you see People's Exhibit 18 on the morning of July 5, 1955?

A. Is this People's Exhibit 18 (indicating)?

Q. Yes.

A. I did.

Q. When did you see it?

A. To the best of my recollection about 3:00 or 3:30 in the morning.

Q. Now, can you tell us where you were from about an hour to an hour and a half before you saw People's Exhibit 18?

A. I was either in the report room downstairs at the West [fol. 626] Los Angeles Station or in one of the adjoining squad rooms.

Q. And you are now referring to squad rooms which appear on People's Exhibit 23?

A. Yes, sir.

Q. During the time that you were in the adjoining squad rooms, was the defendant in the Commander's office?

Mr. Armstrong: Just a moment. To which we will object on the basis of the last answer of the witness. He hasn't stated he was in the squad rooms. He was alternately in one or the other places.

The Court: The objection is sustained. It calls for the conclusion of the witness.

By Mr. Alexander:

Q. Did you see the defendant in the Commander's office at all?

A. During this period?

Q. At any time.

A. Yes.

Q. When?

A. From approximately 11:15 p.m. until about 1:45 or 2:00 o'clock on the morning of the 6th.

Q. During that time did you see Sgt. Hooper strike this defendant?

Mr. Armstrong: To which we will object as being not proper rebuttal in that it doesn't tend to contradict or rebut any statement that was made during the voir dire examina-
[fol. 627] tion with the period of times mentioned in the question.

The Court: You may answer.

The Witness: I did not see Sgt. Hooper strike the defendant at any time.

By Mr. Alexander:

Q. Did the defendant at any time make any complaint to you that anybody had struck him?

A. No, sir.

Q. Do you recall being in the photographic laboratory downtown and while the defendant was present, you observed a reporter from some newspaper?

A. I observed a man who identified himself as a photographer.

Q. What did you do as soon as you found out he was a photographer?

A. I asked him who he was and what his business was in that room, and when he informed me that he was a news photographer, I informed him that he must leave that room, that he wasn't supposed to be in there.

Q. Did he leave?

A. Yes, he did.

Mr. Alexander: That is all.

The Court: Cross examine.

[fol. 628] Cross-examination.

By Mr. Armstrong:

Q. Inspector Kerr, on the last occasion when you testified here, did you inform us that you were not introduced to the defendant?

A. I don't recall being introduced to him formally.

Q. In other words, you hadn't been presented to him either by your name or your rank?

A. I don't recall any such introduction.

Q. Well, was there any occasion that the defendant could have complained to you of any mistreatment after 2:30 or 3:00 o'clock a.m. on the morning of the 6th?

A. Well, I saw him prior to his departure for the West Los Angeles Station to the house at 1100 Somera Road.

Q. At that time, according to your best recollection, he had no way of knowing who you were either as to name or rank?

Mr. Alexander: That is calling for a conclusion.

Mr. Armstrong: To the best of his knowledge.

The Court: Had you been introduced to him by name or rank at any time prior to his departure for Somera Road?

The Witness: Not to my recollection.

[fol. 629] Mr. Armstrong: That is all.

Mr. Alexander: I have nothing further from this witness, your Honor.

The Court: This might be a good point for the noon recess. Ladies and gentlemen, do not discuss the case among yourselves or talk to anyone about it or form any opinions or conclusions until the matter is finally submitted to you. I understand on some occasions, one or more of the jurors have asked to leave the jury room to make telephone calls during recesses.

The Court cannot permit jurors to wander around, either in the courtroom or the corridors where there are numerous spectators and reporters and counsel and witnesses, during court proceedings.

You will have to take care of your personal problems, your personal affairs before and after court sessions. During court sessions, I will have to confine you to the jury room.

We will resume at 2:00 o'clock.

(Whereupon at 11:50 o'clock a.m. a recess was taken until 2:00 o'clock p.m. of the same date.)

[fol. 630] Santa Monica, California—Wednesday, November 23, 1955

2:00 O'Clock P. M.

The Court: The jury is present. Your next witness for the People.

Mr. Alexander: I call Sgt. Hooper.

The Court: You have already been sworn. State your name again, please.

J. H. Hooper, recalled as a witness for the People for voir dire examination, having been previously duly sworn, resumed the stand and testified as follows:

The Clerk: Be seated and state your name, please.

The Witness: J. H. Hooper.

Direct examination.

By Mr. Alexander:

Q. Sgt. Hooper, directing your attention back to the time you were in Commander Armstrong's office and the defendant was present, you were having a conversation with the defendant; this was after he had been brought back from downtown. I will ask you if at any time this occurred:

The defendant was at the end of the desk; that is, in Lt. Armstrong's office, and you had taken over the questioning; you jumped up from your chair over to the defendant's [fol. 631] chair and banged your hand down on his knee.

A. No, sir.

Q. Did that ever occur?

A. It did not.

Q. Did the defendant then turn to Lt. Armstrong and say "There, you see." And Armstrong said: "What do you mean?" Did that occur?

A. No, sir, that did not occur.

Q. And did the defendant say, "They are going to use force to make me answer their questions before I have an attorney." Did the defendant say that?

A. No, sir, he made no such statement.

Q. Did you then say, "Look, you son-of-a-bitch, I have been in this work for sixteen years and I am not going to let someone like you come in here and tell me he is not going to answer questions. You are going to tell us what we want to know, and you are going to tell us *now*." Did you say that?

A. I made no such statement.

The Court: Just a moment, I dislike to interrupt. If there are any persons in the court room who are concerned with juvenile cases this afternoon, please report down to Department C. Go ahead, Mr. Alexander.

By Mr. Alexander:

Q. Did you say any part of that, Sgt. Hooper?

A. No part of that, no, sir.

[fol. 632] Q. And then did you, with your fist or the back of your hand or any other part of your hand strike the defendant in the stomach?

A. I never touched the defendant at all.

Q. Then did you say, "Did you hear me?" And hit him again in the stomach?

A. No, sir, I did not.

Q. Then did he say, "Yes, I heard you"?

"Well, then, answer me."

Or, rather, did the defendant say, "Yes, I heard you."?

A. There was no such statement as that, no, sir.

Q. Did you then say, "Well, then answer me; when I ask you something, say something." Did you say that?

A. No, sir.

Q. And then did you say this, "You are going to give me the answers that I want, or I am going to take you out and work on you like that for the rest of the night."?

A. I made no such statement.

Q. And then did Mr. Frank Gravante say that you, Hooper, meant exactly what you said?

A. I heard him make no such statement, no, sir.

Q. By the way, how long are you a police officer?
A. It will be fourteen years in January.

Mr. Alexander: I have no further questions. your Honor.
The Court: Cross examine.
[fol. 633] Mr. Armstrong: No questions.

(Witness leaves stand.)

Mr. Alexander: Mr. Ley.

THEODORE B. LEY, called as a witness by and on behalf of the People, after being duly sworn, was examined and testified as follows:

The Witness: Theodore B. Ley.

Voir dire examination.

By Mr. Alexander:

Q. Mr. Ley, what is your occupation, please?
A. I am a police officer, City of Los Angeles.
Q. Attached to which detail?
A. West L. A. jail.
Q. The West Los Angeles jail?
A. West Los Angeles jailer.
Q. You are known as the jailer of the West Los Angeles Station?
A. Day watch jailer.
Q. Day watch jailer?
A. Yes, sir.
Q. Was that your occupation on the morning of July 6th, 1955?
A. Yes, sir, it was.
Q. That morning about what time did you report for work [fol. 634] as jailer?
A. We had an 8:15 roll call, and at 8:30 I was excused from roll call to go about my duties as jailer.
Q. Sometime during that time did you see the defendant, Crooker, in jail?
A. Yes, sir, I did.
Q. Did you have a conversation with him pertaining to a lawyer or friends?

Mr. Armstrong: Establish the date, please.

Mr. Alexander: Counsel, if I didn't, I'm sorry.

Q. The morning of July 6th, 1955?

A. Yes, sir, I had a conversation with him.

Q. As best you recall, Mr. Ley, will you tell the Court and jury what the conversation was?

A. I asked him, up in his cell, he had an upstairs cell, I asked him if he wanted to put in a call for an attorney, and he told me he had no attorney and he had no one to call. I asked him about his relatives, if he wanted to put a phone call in to relatives, and he said his relatives were all in the East and he didn't want to bring them into it.

Mr. Alexander: Cross examine.

Cross-examination.

By Mr. Armstrong:

Q. Have you discussed your testimony with anyone be- [fol. 635] fore coming to court, Officer Ley?

A. No, sir.

Q. When did you first learn that you were to be called as a witness here?

A. This morning.

Q. And prior to that time you hadn't told anybody about this conversation?

A. No, sir, I hadn't.

Q. Did you furnish any report to any investigating officers?

A. There was no report that has been made. It was just a conversation that I had with the defendant at his cell in the morning.

Q. My question, Officer, is, prior to coming here, have you had a conversation with some police officer about this conversation you say you had with the defendant, or have you had a conversation with a member of the district attorney's office regarding your testimony?

A. Well, I stated to the officers, the investigating officers, that I never heard him ever once say anything about that, about a request for an attorney.

Q. When did you state that?

A. I imagine that was about 9:00 o'clock this morning.

Q. Who was the investigating officer that called you?

A. Gravante.

Q. As a matter of fact, when Officer Gravante called you, [fol. 636] didn't he tell you to say just what you have said here?

A. No, sir, he did not.

Q. And the first time that you have had any discussion on this subject at all since the time that you had this alleged conversation with the defendant was in your conversation that you had with Officer Gravante this morning?

A. Yes, sir.

Q. And up until that time you had no conversation at all?

A. No, sir, I had not.

Q. Do you know Officer Gravante?

A. Yes, I do.

Q. How long have you known Officer Gravante?

A. A couple of years, since he has been at West L. A.

Q. And you are a fellow police officer of his on the force out there?

A. He is in the detective bureau, and I am in the patrol division.

Q. Do you recognize the diagram that is People's Exhibit 22—is it?

Mr. Alexander: 23.

By Mr. Armstrong:

Q. 23 for identification. Officer, if I remind you that this purports to be a drawing of a portion of the second floor of the West Los Angeles Police Department, particularly the Detective Bureau, are you familiar with that area?

[fol. 637] A. Yes, sir.

Q. Have you been up there?

A. Yes, sir.

Q. Where is the jail in relation to that floor?

A. That is the second story?

Q. Yes.

A. The jail is on the first floor, in the rear.

Q. When you say "in the rear", where would—do you know where Lt. Armstrong's office is?

A. Yes, sir.

Q. Do you see it marked there on the diagram?

A. Yes, sir.

Q. I believe it is marked "Commander's office on the diagram"?

A. Yes.

Q. When you say, "rear"—"the first floor in the rear", where would the rear of the building be in relation to Commander Armstrong's office?

A. May I point to it?

Q. Yes, by all means. Pull this around so that the jury can see it.

A. (At diagram) The jail is this section here, downstairs (indicating). In fact, it is over on the end of the building. There are two more rooms over on the other side of this (indicating) that extended out further. The jail would be about from here on out down to the rear of the building [fol. 638] (indicating). This is the front of the building (indicating).

Q. I see. Thank you. You may resume the stand.

And who is the officer in charge of the West L. A. station?

A. Captain Martin.

Q. Captain Martin?

A. Yes, sir.

Q. And he is the superior officer under whom you work, is that right?

A. Yes, sir.

Q. He is also the superior officer under whom Officer Gravante works?

A. No, I don't think so.

Q. You don't think so, or you don't know?

A. We are under the patrol division. They are under the detective division.

Q. There is no officer that is in command of both?

A. No, sir, there isn't.

Q. Well, now, directing your attention to this conversation that you had with the defendant on July 6th—what day of the week was that, by the way, do you remember?

A. I don't recall.

Q. How do you mark that in your mind as being on the sixth of July?

A. I remember the case well when I came in this morning, [fol. 639] the photographers being there and everything, and I had only been working the—assigned to the jail for

just a week or so, and it was the first big thing that had happened since I was in the jail.

Q. When was the defendant transferred to the County Jail?

A. It was quite awhile after that. I am not certain.

Q. What do you mean by "quite awhile"?

A. A week, maybe ten days, something on that order.

Q. As a matter of fact, wasn't the defendant transferred to the County Jail on the 8th of July?

A. I am not sure. I had so many going in and out, I can't keep track of the correct dates.

Q. But it is your recollection it was a week or ten days later that he was transferred to the County Jail?

A. That may have been.

Q. You don't know what day of the week the 6th was?

A. No, I don't.

Q. Do you suppose this conversation you had with the defendant could have been on the morning of the 7th?

A. No.

Q. Well, can you tell me how you mark it in your mind as being the 6th, as opposed to the 7th?

A. Because I had a conversation with him as we went back up into his cell after the photographers had been downstairs. [fol. 640] Q. Weren't the photographers downstairs on the morning of the 7th also?

A. No, sir.

Q. Now you are certain that there were photographers there on the morning of the 6th, but there were not photographers there on the morning of the 7th, is that right?

A. I think there may have been one photographer there on the morning of the 7th from a local newspaper, the Independent, or something, but he was only there for a matter of a few minutes and left. He wasn't there any time, though.

Q. If I refresh your recollection, Officer, by telling you that the morning of the 7th was the morning that the defendant was arraigned in court, and that there were photographers there from all major newspapers, as well as newsreel photographers taking pictures on that occasion as he went into court to be arraigned, and as he left the jail, would that refresh your recollection as to how many photographers were there on the morning of the 7th?

A. I didn't see any around there then when he left.

Q. What time did he leave on the 7th?

A. It would be in the morning. The arraignment was in the morning. It would be sometime around——

Q. (Interrupting) I am not saying when it would be from what your common experience is. I am asking you if you remember what time it was that this defendant was [fol. 641] arraigned? Do you have a distinct recollection, or are you just telling us what was the normal custom?

A. I am telling you what is the normal custom.

Q. I don't want to know that. If you don't remember, just say so. Do you know what time it was that the defendant was arraigned on this particular day?

A. No, sir, I do not. I didn't put a watch to it.

Q. I don't mean the exact minute, but, I mean, do you know whether it was in the fairly early morning hours, the late morning hours, or the early afternoon hours?

A. I couldn't say.

Q. And it is further your testimony that you couldn't say whether—strike that.

Did you have any other conversations with the defendant while you were jailer and he was in your jail?

A. Yes, I had several conversations with him.

Q. Do you remember approximately how many other prisoners there were in the West Los Angeles jail at that time?

A. No, sir, I don't.

Q. Can you give me an approximation?

A. I haven't the slightest idea. We have our drunk tank and we have our felony cells, and I couldn't tell how many were for court or how many were felonies.

Q. Putting aside the drunk tank, could you give me an estimate of how many were in the felony cells?

A. No, I couldn't.

[fol. 642] Q. How many felony cells do you have?

A. Five.

Q. How many men are put in each cell?

A. Two.

Q. So the most men you could possibly have, if you have a full house in the felony section, would be ten, is that right?

A. That's right.

Q. Now, while the defendant stayed in your jail, you say you had several conversations with him?

A. Yes.

Q. I take it that these conversations were on assorted subjects?

A. Yes, they were.

Q. Can you remember any of the other conversations you had with him?

A. Well, several, about the food. I went up every time that he had to eat. I had to go up and open the cell door to put food in there, and I had conversations with him at that time.

Q. And you did this every day that he was there, is that right, every day you were on duty?

A. Yes.

Q. What days were you on duty during that time?

A. I was on duty the 6th and 7th, and I was off the 8th and 9th, and I came back to work after the 9th.

[fol. 643] Q. And when you came back to work on the 9th, did you then again carry the food up to the defendant's cell? Did you have any conversations with him then?

A. I don't recall.

Q. Well, you recall carrying food up to his cell?

A. I talk to all of them when I take the food up to them.

Mr. Alexander: That is argumentative. I object to that question.

The Court: Yes, the objection is sustained. It is argumentative.

By Mr. Armstrong:

Q. You say that you don't recall conversations, but then my question is, do you recall bringing his food up to him and opening his cell door, as you recall doing on the 6th and 7th after you got back from your days off?

A. I talk to all the prisoners.

Q. I don't think you are listening carefully to my question. I say, do you remember—do you have a recollection of opening his door and bringing his food to him after you got back from your two days off on the—that would be the 10th that you returned to work?

A. If he was there, I did.

Q. Well, that would follow, but the question is, do you remember?

A. I can't tell just what we talked about.

[fol. 644] The Court: That isn't the question.

By Mr. Armstrong:

Q. You see, Officer, what I am trying to keep from doing is to have you tell me what you do as a matter of routine, what you do with John Crooker or any other man in custody. I am trying to find out what you remember specifically about John Crooker.

Now, you have testified that you remember having this conversation with John Crooker, and you have testified that your attention was particularly attracted to this defendant because the case was an unusual one and there was a lot of attention to it, isn't that right?

A. Yes, sir.

Q. All right, and you were new in the jail so that it was more impressive to you than it might have been if you had been there for some time. That was the substance of that testimony, too, wasn't it?

A. Yes, sir.

Q. What I am trying to find out from you, if you also remember, it still being the same celebrity type of case, when you returned from your days off, do you remember opening this door and bringing the food up to John Crooker on the subsequent days as you did the previous days?

A. I don't remember anything unusual about it.

Q. Whether you remember anything unusual about it or [fol. 645] not, do you remember doing it?

A. No. It is just force of habit after that, just a job.

Q. The way that you remember that this particular date that you have told us about was the 6th and not the 7th is because of the fact that there were a great number of photographers and people from the press present on the 6th, but there was only a single photographer, if any, on the 7th, is that right?

A. Yes, sir.

Mr. Armstrong: I have no further questions.

Redirect Examination.

By Mr. Alexander:

Q. Did this conversation occur the third day you saw Crooker in that cell?

A. Yes, sir, it did.

Mr. Alexander: That is all.

The Court: That is all.

Mr. Alexander: May he be excused?

The Court: Yes, you may be excused.

Mr. Armstrong: Just a minute. Pardon me. Just one more second.

[fol. 646] Recross Examination.

By Mr. Armstrong:

Q. How many people work in the jail up there?

A. We have a jailer on all three watches, which would be three jailers. We have one head jailer, a custodian of the whole station. He is in and out of the cells and the jail all day long. He is seeing that the building is kept clean and everything is in order. That would be four.

Q. You can sit down a minute, Officer. There is another question I want to ask you. What I am talking about is on a given shift, on your shift.

A. Two. There would be two men back in the jail.

Q. And who was the other man at that time, do you remember?

A. Officer Benglen.

Q. Officer who?

A. Benglen.

The Court: How do you spell that?

The Witness: B-e-n-g-l-e-n, I believe is the spelling.

The Court: Are you talking about now or back on July 6th?

The Witness: Well, that has been his job for the last two or three years.

[fol. 647] By Mr. Armstrong:

Q. Now, Officer, it is your—May I have permission to ask a couple of more questions on cross, rather than recross?

The Court: Yes, you may.

Further Cross Examination.

By Mr. Armstrong:

Q. So it is your recollection that when you asked the defendant if he wanted to phone anybody in his family, he said that they were in the East?

A. Yes.

Q. Do you remember having any other conversation with the defendant about his family?

A. I think he said his sister wanted to come out here, but he told her not to.

Q. Did he ever talk to you any about his wife in these conversations you had with him?

A. He never mentioned the wife at all.

Mr. Armstrong: May I have the last answer read, please?

(Answer read by the reporter.)

Mr. Armstrong: And the next to the last.

(Next to last answer read by the reporter.)

Q. Now, Officer, did he tell you, when he had an opportunity to contact his sister, to find out that she didn't want to come out?

[fol. 648] A. No, sir, he said he didn't want them out here.

Q. Did he say why he didn't want them out here?

A. He didn't want to drag their name into it.

Q. Because of this murder charge?

A. Yes, sir, I presume that is what he was referring to.

Q. Did he say that he had had a conversation with his sister already at the time that he told you he didn't care to make any phone calls?

A. He didn't say.

Q. You say that he had told you that his sister had indicated she wanted to come out, but that he didn't want her to come out?

A. Yes.

Q. Now, did he tell you how he was aware of the fact that his sister wanted to come out?

A. No, he didn't.

Mr. Armstrong: I have no further questions.

Mr. Alexander: Nothing further.

The Court: That is all.

Mr. Alexander: Will you call Officer Stambler back, please?

[fol. 649] WILLIAM STAMBLER, recalled as a witness in behalf of the People, having been previously sworn, was examined and testified as follows:

The Court: You have already been sworn. Be seated and state your name again.

The Witness: William Stambler.

Direct examination.

By Mr. Alexander:

Q. Mr. Stambler, directing your attention to the time that the defendant was taken to the Crime Laboratory downtown, did you, in that Crime Laboratory, in that building, at any place, hear Sgt. Gotch say to the defendant, "You stabbed her and strangled her to death"?

A. No, sir.

Q. Did you say to this defendant, "You stabbed her and strangled her to death"?

A. No, sir.

Mr. Alexander: That's all.

The Court: Cross examine.

Mr. Armstrong: No questions.

(Witness leaves the stand.)

Mr. Alexander: Sgt. Gotch.

[fol. 650] JACK G. GOTCH, recalled as a witness on behalf of the People, having been previously sworn, testified further as follows:

The Court: You have already been sworn. Will you state your name again for the record?

The Witness: Jack G. Gotch.

Direct examination.

By Mr. Alexander:

Q. Officer Gotch, directing your attention to the time you went to the Crime Laboratory with this defendant, did you at any time say to this defendant, "You stabbed her and strangled her to death"?

A. I did not.

Q. Did you hear Officer Stambler say to this defendant, "You stabbed her and strangled her to death"?

A. I did not.

Q. Officer Gotch, were you present in the office of the District Attorney on the afternoon of the 6th of July when the statement was taken from this defendant?

A. I was not.

Q. Were you traveling in the same car with the defendant at the time you went to 1100 Somera Road for the purpose of re-enacting the crime?

A. I was not.

Mr. Alexander: I think that is all, if the Court please.

[fol. 651] The Court: Cross examine.

Cross-examination.

By Mr. Armstrong:

Q. During the questioning that was going on prior to 2:00 o'clock in the morning on the 6th of July did you at any time hear any other officer in your presence ask the defendant if he had stabbed Norma McCauley?

A. I did not.

Q. I will direct your attention to Lt. Armstrong and ask you if you remember hearing Lt. Armstrong say—ask you if he did not pose that question to the defendant?

A. No, sir, he did not.

Q. You were seated in the courtroom when Lt. Armstrong testified that he did, were you not?

Mr. Alexander: That is immaterial, if the Court please.

The Court: Objection sustained.

Mr. Armstrong: That's all.

(Witness leaves stand.)

Mr. Alexander: Mr. Rutherford, please

[fol. 652] FRANK RUTHERFORD, called as a witness on behalf of the People, having been first duly sworn, was examined and testified as follows:

The Clerk: Be seated and state your name, please.

The Witness: Frank Rutherford.

Direct examination.

By Mr. Alexander:

Q. Mr. Rutherford, will you state your occupation?

A. I am a police photographer for the Herald-Express.

Q. How long have you occupied that position?

A. About six years.

Q. Mr. Rutherford, on the night of July 5th were you directed to proceed to the West Los Angeles Police Station?

A. Yes, sir.

Q. Who directed you to do that?

A. Our Night City Editor.

Q. Did you arrive at the West Los Angeles Police Station on the night of July 5th, 1955?

A. Yes, sir.

Q. How long did you remain at that station after arriving there?

A. Oh, from about 9:00 o'clock until shortly after 5:00 [fol. 653] the next morning.

Q. That would be shortly after 5:00 a.m. on July 6th, is that correct?

A. Yes, sir.

Q. Were you present when the defendant was brought to the West Los Angeles Station that night?

A. Yes, sir.

Q. Who else was there at the time?

A. Oh, there was photographers and reporters from the four metropolitans.

Q. About how many in all?

A. About eight.

Q. When the defendant arrived, with whom did he come?

A. Two detectives in the police car.

Q. I take it you took photographs after they arrived at the station house?

A. Yes, sir.

Q. After they arrived did you see where the defendant was brought to?

A. Yes, he was taken upstairs, and we followed.

Q. Was he taken to any particular portion of the upstairs part of the West Los Angeles Police Station?

A. Well, it is in the Defective Bureau. He was taken into the Captain's office in the back.

Q. Directing your attention to People's Exhibit No. 23, [fol. 654] do your recognize this drawing as a drawing of the Detective Division of West Los Angeles, Lt. Armstrong's office, squad room, and another squad room to the left, and an office here?

A. Yes, sir.

Q. Do you recognize that?

A. Yes, sir.

Q. After the defendant was brought to the station and to the Captain's office, you are referring now to what appears to be the Commander's office?

A. Yes, sir.

Q. Where did you remain?

A. Where you have "Reception Office."

Q. In this office (indicating on diagram)?

A. Yes.

Q. Designated "Reception Office"?

A. Yes.

Q. How many of you remained in that office?

A. There was six of us. The reporter from the Examiner and Times had stopped to phone to say he had arrived.

Q. Were you present when the defendant was brought from these offices and booked?

A. Yes, sir.

Q. And you witnessed the booking, is that correct?

A. Yes, we took pictures of that.

[fol. 655] Q. You took pictures of the defendant as he was being booked?

A. Yes.

Q. Were you present when he was brought back to that office?

A. Yes.

Q. After he was brought back to that office did you remain in what is called the reception office?

A. Either in the reception office or where it says "Squad Room" there.

Q. Which one, now?

A. That one right above the reception office (indicating on diagram).

Q. The first squad room next to the Lieutenant's office?

A. They let us go in there to sit down, yes.

Q. When you were in the reception office there in the squad room were you able to hear any of the conversation going on in what is called the Commander's office?

A. Yes, sir.

Q. And did you remain in the reception room or in the squad room until after 3:00 o'clock in the morning?

A. Approximately that time, yes, sir.

Q. Did you see the defendant leave with the officers at about that time?

[fol. 656] A. Yes, sir.

Q. Did someone tell you then that he had written a statement?

A. Yes, sir.

Q. And up to the time you were told that you remained either in the reception office or the squad room, as you designate it?

A. Yes, sir.

Q. And the other six men were there with you, is that correct?

A. There was at least six. The morning papers, which is the Examiner and Times, sent crews to relieve theirs, as they were on their deadline.

Q. During the entire time you remained either in the reception office or the squad room did you hear any shouting at any time?

A. No, sir.

Q. Did you hear the sound of a slap at any time?

A. No, sir.

Q. Do you know whether the windows on the north side of the Lieutenant's office were open during the time the defendant was in that office?

A. Yes, sir.

Q. How do you know that?

A. Well, we couldn't make out all the conversation there so we chose up to see who would go outside and stand by the [fol. 657] window and try to get some of the conversation, because we wanted to know what was going on.

Q. That is outside and directly below those windows to the north, is that right?

A. Yes, sir.

Q. Who was chosen to do that?

A. My reporter.

Q. When you say you are a police reporter, you are not employed by the Police Department, are you?

A. No, that is a term designated, that we take crime stories.

Q. That is your particular beat, working for the Herald Express?

A. Yes, sir.

Mr. Alexander: Cross examine.

Cross-examination.

By Mr. Armstrong:

Q. While your reporter was outside where were you, Mr. Rutherford?

A. We were most of the time in the squad room because there were desks and chairs there.

Q. Did you see your reporter outside?

A. Yes, I went down there one time to, you know, to see what went on, and then we sent out for sandwiches.

Q. What was his position?

[fol. 658] A. There is a, oh, I would say about a three-foot

ledge that extends about this far, as a desk, and he was standing on that directly below the window.

Q. This was outside the second story of the building?

A. Yes.

Q. How far was he off the ground?

A. About three feet off the ground, the first floor.

Q. He was standing outside the first floor?

A. Yes, sir.

Q. Underneath the second floor?

A. Yes, sir.

Q. And judging from the height of the ceiling in this room, how far would you say he was below the window?

A. I would say ten or twelve feet, maybe fourteen.

Q. He was ten or twelve or fourteen feet below the window, is that right?

A. Yes.

Q. Now, as I understand it, the reason that you chose one of your number to go out there was so that you could get a line on what was going on inside?

A. Yes, we wanted to get more, so we could hear what was in that part of the room.

Q. You didn't ever occupy this particular place yourself, [fol. 659] just your reporter did, is that right?

A. Well, when he went for sandwiches, it was about five minutes I was there.

Q. What time of the day was that?

A. Oh, I would say it was then 1:30 or 2:00 o'clock.

Q. When he went for sandwiches, then you took his station?

A. Yes.

Q. Were you able to hear what was going on?

A. I could hear some of the conversation, yes.

[fol. 660] Q. Did you hear questions or answers, or did you just hear one voice over the others?

A. No, most of the time you could just hear parts of the conversation. I thought it was pretty ridiculous because I couldn't get enough out of it.

Q. Sounds pretty ridiculous to me, too.

Mr. Alexander: I ask that that be stricken out.

Mr. Armstrong: Stipulate it may go out.

Q. As far as your position inside is concerned. the reason you sent somebody out was because you could hear practically nothing in the reception room, isn't that right?

A. What they wanted to do, in the squad room, by the door there, they were standing there by the door to hear what they could hear; and they found out the window was open, and said, "Maybe can hear a little more and we can compare the one with the other, the one outside."

Q. You say you were there when the defendant was booked?

A. Yes, sir.

Q. Did you take pictures at that time?

A. Yes, sir.

Q. Do you remember what time that was?

A. It was between 12:15 and 12:30.

Q. And then do you remember whether you said some of the time you were in the squad room and some of the time you were in the reception room?

[fol. 661] A. We stayed in the reception room until they let us take over the squad room to have a place to sit down, and more or less headquarters while we were waiting.

Q. Then all the reporters and photographers from the other newspapers, as well as your own paper, were in this area in here (indicating on diagram)?

A. No, no, sir.

Q. I mean at first, until they allowed you to go in the other room, is that right?

A. Yes, sir.

Q. How many rooms are there on that second floor, do you know, counting the reception room?

A. Oh, there is the, well, the only thing—when I have been going in, usually go in the detective bureau, I know there are more rooms in back, back rooms and rest room in the back there at the back end, and that is the first place you go when you go out there for a story, you go out to the reception desk, where the man sits at the desk where you get your information (indicating on diagram).

Q. Indicating this desk?

A. Yes, sir.

Mr. Armstrong: The witness is indicating the desk in the centermost position of the room marked "reception office" in People's Exhibit 23 for identification.

Q. Now there are chairs all around in here for people to sit on?

[fol. 662] A. Not where the counter is. There is one long bench that runs the length, right there.

Q. Runs along which wall?

A. Yes, right there. (Witness indicating on diagram.)

Mr. Armstrong: The witness is indicating a bench that runs in a westerly direction from the long rectangle marked "counter" at the left center of the room, marked "reception office" of People's Exhibit Number 23 for identification.

Q. Now, you say later they allowed you to come in here so you would have more room to sit down?

A. Yes, to use the desk, more or less headquarters, and the phones are in there.

Q. Actually there is more sitting space out here than in there?

A. No, there is just that one bench, and when you set down four cameras, there is no room to sit down then.

Q. When they allowed you to come in this room, was this door open or closed?

A. It was closed.

Q. Is there a transom over that door?

A. You got me, I don't know.

Q. How was the hearing situation in the squad room as to what was going on in the commander's office, how was the hearing situation there as to what the hearing situation was in the reception room as to hearing what was going on in the commander's office?

[fol. 663] A. I would say it was the same. The door that goes into the reception room from the commander's office is usually open. When we were outside, it was usually open.

Q. You mean when you were out here in the first part of this questioning, before you were led into the squad room, this door connecting the commander's office with the reception room was open?

A. No, there was fellows, policemen, coming in and out and the door was open enough.

Q. You mean it was opened and closed?

A. Yes.

Q. If nobody was using the door, it was closed?

A. Yes.

Q. If an officer was coming in or out, the moment the door was open you might hear a snatch of conversation from the inside while the door was in an open position, is that what you mean to say?

A. Yes.

Q. I see. Did, to your knowledge, did any police officer see your confederate outside here on the ledge?

A. No, I don't think so.

Q. To your knowledge, no officer came along and told the reporter to get away from the window, or anything like that?

A. No, sir, I don't think so. He would have mentioned it, I am sure, if that was so, no, sir.

[fol. 664] Q. At least you were able to take his station over for him at 1:30 o'clock to 2:00 o'clock in the morning, whenever it was, that he went to get a sandwich, is that right?

A. Yes, sir.

Q. You are familiar with the West Los Angeles Station, aren't you, Mr. Rutherford?

A. Yes, sir.

Q. This side here would be the east, and this is Purdue Avenue, right here in the east, so this little ledge that you were standing on for part of the time, and your reporter was standing on for another part of the time, is a ledge up from the sidewalk?

A. Yes, sir.

Q. Can you tell us a little bit more about this ledge; do you know what its function is; is it just a decoration or is there something underneath there, or what is the ledge there for?

A. There is a stairway where you go into the police building, you know, the steps, the wide steps, and I guess more or less——

Q. Like a little porch?

A. The steps go right down between the two ledges. The ledges run on each side of the steps going into the station.

Q. In other words, it would be like a bannister, only wider?

[fol. 665] A. Yes.

Q. In a position of a bannister?

A. Level with the porch.

Q. And it is adjacent to the main door going into the first floor of the West Los Angeles Police Department?

A. That is correct.

Q. And so each of you were standing on the—were you standing to the left or to the right of the main entrance?

A. Facing the building, it would be to the right.

Q. It would be to the right; you were on the right side; so to your immediate left would be the main entrance to the station?

A. Yes.

Q. Did you notice whether officers were walking in and out of that main door?

A. The police don't use that main door; they use a side entrance. It is up on the north side of the building.

Q. That is the door that more or less is for public use, is that right?

A. Yes.

Q. I see. All right, thank you, Mr. Rutherford, nothing further.

Mr. Alexander: That is all.

The Court: Just a moment, Mr. Kavanaugh.

[fol. 666] Juryman Kavanaugh: Do you know whether the shades were drawn on the window that was open?

A. No, they were open; pretty warm evening.

By Mr. Armstrong:

Q. Along that line, what kind of shades were there on the window?

A. I don't know what kind of shades there were. Light was streaming out through the window.

Q. In other words, you base your answer that the shades were open on the fact that you saw light coming out through the windows?

A. No, the windows were open; that was what first directed our attention to it, the windows were open, because the cars were parked across the street and we knew they were in the Commander's office.

Q. Could you tell me whether there are window shades on those windows that can be pulled down, or venetian blinds?

A. I wouldn't know.

Q. The point is, that you have concluded the shades were open in your answer by the fact of the light, isn't that right, other than your particular observation?

A. No, because we could see in the room from across the street.

Q. From across the street what could you see in the room?

A. Oh, you could see the Commander's room; you could see different officers walking around, detectives walking [fol. 667] around.

Q. Could you see if there were any uniformed officers in there?

A. No, sir.

Q. That is, you couldn't see or you didn't notice?

A. I didn't see any.

Q. How much of the people walking around in there could you see from outside the window.

A. Oh, just when somebody came right close to the window.

Q. If anybody was any distance back from the window, why, in other words, you didn't observe anybody any distance away from the window, you just saw people right close to the window?

A. No, somebody coming in the building, coming upstairs, you could see they were in there. The window was open was what made them decide to let somebody stand below the window in the first place.

Q. Are you familiar with Lt. Armstrong's office; you have been in there, haven't you?

A. I have been in there, yes.

Q. Which side of this desk is Lt. Armstrong's chair on?

A. Truthfully, I can't even tell you if the desk is right there where they have it.

Q. The question I was addressing to you a minute ago was [fol. 668] what you saw, and you said you saw, that you did see somebody as they got close to the window, is that right?

A. Yes.

Q. Did you observe whether there appeared to be somebody that was constantly within your vision that was sitting either here or here (indicating on diagram)?

A. No, sir.

Q. That you could see in the window, as opposed to someone you could just see occasionally?

A. No.

Mr. Armstrong: Nothing further.

Mr. Alexander: Nothing further. May this witness be excused?

The Court: Yes, you are excused.

(Witness excused.)

Mr. Alexander: Frank Gravante, please.

FRANK GRAVANTE, called as a witness by and on behalf of the People, after previously being duly sworn, was examined and testified further as follows:

The Court: You have already been sworn. Be seated and state your name, please, again.

The Witness: Frank Gravante, G-r-a-v-a-n-t-e.

[fol. 669] Voir dire examination.

By Mr. Alexander:

Q. Mr. Gravante, directing your attention to the time the defendant was in Lt. Armstrong's office, prior to the time that he wrote People's Exhibit 18, I will ask you, Mr. Gravante, whether this occurred:

That Sgt. Hooper took Lt. Armstrong's chair, that Sgt. Hooper jumped up from his chair over to the defendant's chair and banged his hand down on the defendant's knee. Did that occur?

A. No, sir.

Q. Did the defendant then turn to Lt. Armstrong and say, "There, you see," and Armstrong said, "What do you mean"? Did anything like that occur?

A. No, sir.

Q. And did the defendant then say, "They are going to use force to make me answer their questions before I have an attorney." Did the defendant say that?

A. No, sir.

Q. And then did Hooper say, "Look, you son-of-a-bitch, I have been in this work for sixteen years and I am not going to let someone like you come in here and tell me he is not

going to answer questions. You are going to tell us what we want to know, and you are going to tell us now."

Did Hooper say that?

A. No, sir.

[fol. 670] Q. Did Hooper then strike the defendant with his fist, the back of his hand, or anything else in the stomach?

A. No, sir.

Q. And then did Hooper say, "Did you hear me," and hit the defendant again in the stomach?

A. No, sir.

Q. And the did Hooper say, "Yes, I heard you—" strike that.

And then did the defendant say, "Yes, I heard you," and Hooper say, "Well, then, answer me when I ask you something, say something to you."

Did Hooper say that?

A. No, sir, not that I recall.

Q. And then did Hooper say, "You are going to give me the answers that I want or I am going to take you out there and work on you like that for the rest of the night."? Did Hooper say that?

A. No.

Q. And then did you say to this defendant, "Hooper meant exactly what he said"?

A. No, sir.

Q. Did the defendant then say to you, or did the defendant ask you what you or Hooper wanted the defendant to say, and what he had to say to make them leave him alone? Did he say that to you?

A. No.

[fol. 671] Q. Did the defendant say, "I told Mr. Gravanate" strike that. Did the defendant say to you that he would say anything they wanted him to say if they would leave him alone? Did the defendant say that?

A. Did the defendant say that to me?

Q. Yes.

A. No, sir.

Q. Now, do you recall the immediate time preceding the time that the defendant started to write People's Exhibit 18?

A. Do I recall the immediate time?

Q. Yes.

A. Yes, sir.

Q. Would you tell the Court and jury, please, as well as you can remember, the conversation between you and the defendant at that time?

A. When I was left in the room with the defendant, I asked the defendant about the wounds that he had on his hand, about the mark that he had on his neck.

He stated to me that he got the wound on his hands from assisting a vehicle on the road that needed a push. While he was giving the car a push, the bumpers locked and he received the injury to his hand in that manner.

I asked him about the mark on his neck. He stated that he got that shaving. I told him that it looked to me like a fingernail scratch mark. He didn't answer.

[fol. 672] I then asked him to relate any additional information that he possibly could about his activities on the 4th or 5th of July because we were willing to do as much to assist him in clearing him, and we were interested in finding out who perpetrated the crime.

I asked him about the threats that he had made to Mrs. McCauley, asked him if he had been in the vicinity of 1100 Somera Road. The defendant then stated, when I asked him pertinent questions about Mrs. McCauley, that he didn't care to discuss it. I told him that all we wanted was the truth. There was only one person that knew what had occurred up at 1100 Somera Road on the night in question. Immediately afterwards the defendant said, "Well, I will write it out for you."

Q. Did you then supply the pad and paper?

A. The defendant then took the Commander's chair in back of the desk. I gave him a pen and a yellow legal pad book. The defendant began writing.

Q. During the time that he wrote that People's Exhibit 18, did you tell him what to write?

A. No, sir.

Q. Was he smoking during the time he was writing People's Exhibit 18?

A. Yes, sir.

Q. Whose cigarettes was he smoking, do you remember that?

[fol. 673] A. Mine.

Q. During the time he was writing People's Exhibit 18, did he ask for coffee?

A. I believe I offered him coffee. There was some in the room and we ran out, and I asked Officer Paige to bring us some coffee, which he did.

Mr. Alexander: That is all at this time, your Honor.

The Court: Cross examine.

Cross-examination.

By Mr. Armstrong:

Q. Officer, do you recall just prior to 2:00 o'clock that Sgt. Hooper was questioning the defendant?

A. There was some questions asked by Sgt. Hooper. There was some questions asked by Sgt. Gotch and by Lt. Armstrong. They were all partaking in the questioning.

Q. And what time did you start questioning the defendant?

A. Approximately 2:00 a.m., when we were alone. I didn't ask him any questions prior to that time.

Q. Then were you in the room all the time from 1:15 until about 2:00 o'clock?

A. No, sir, I was in and out answering phone calls.

Q. And where were you answering phone calls?

A. I either take them in the front room——

Q. (Interrupting) When you speak of the front room, [fol. 674] what do you mean?

A. We would call that our entry room, the reception office.

Q. The one that is marked on People's 23 for identification as "reception office", is that right?

A. Yes.

Q. You were taking phone calls in there?

A. I would take one from there if I possibly could, or I might go to one of the other squad rooms. I don't recall which ones I went to.

Q. When you took a phone call outside of the room, do you recall taking some in the front room, in the reception room?

A. I couldn't recall now, no, sir.

[fol. 675] Q. Well, do you recall if there were any newspaper people out in the reception room that you observed?

A. I saw some people in the reception room, yes.

Q. Then, directing your attention to the time that the defendant was writing this statement, which I believe you testified earlier was from about 2:15 until 3:30, is that right——

A. Yes, sir.

Q. —during the time that he was writing the statement, were you having a conversation with him, telling him what to say?

A. With the defendant?

Q. Yes.

A. No, sir.

Q. Did you sit right next to him and look over his shoulder, or did you move in and out, then, too?

A. I was seated at a chair in front of the desk in the Commander's office.

Q. I see. Well, did you stay there then the whole time he was writing, or did you get up and leave?

A. I stayed with the defendant the whole time.

Q. Was the door into the squad room open or closed? The door from the squad room to the Commander's office.

A. It was, I believe, open, and then it might have been closed during the time that he was writing. I couldn't recall.

[fol. 676] Q. How about the door from the Commander's office into the reception room, was that open or closed?

A. That could have been closed or ajar because my back was to it; and I couldn't tell whether it was opened after we started or not.

Q. When the defendant finished writing this statement, you left Lt. Armstrong's office, is that right?

A. When he finished the statement, we left his office?

Q. Right. I mean—I am asking you. You left Lt. Armstrong's office after he had finished writing, isn't that correct?

A. Eventually, yes.

Q. That is what I mean.

A. Yes.

Q. When you left Lt. Armstrong's office, that was when the defendant was taken outside to some transportation to go some place else?

A. Yes.

Q. Which door did you leave Lt. Armstrong's office by? Did you go out in the reception room, or did you go through the squad rooms, or how?

A. I can't recall which way I went out.

Q. Did you go out with the defendant?

[fol. 677] A. I don't think I did. I can't recall if I did or not. I either left through the squad room and then out through the other door, or through the reception office. I don't recall right now.

Q. Well, now, when you went through—when he finished writing the statement, at the time he finished the writing and you left, did you observe any people from the press around at that time?

A. Yes, sir, I think there were some people in the reception room between the counter and the door. I presume that they were newspapermen.

Q. That was about 3:00 a.m.? Let me put it this way. Did you see a lot of people with flash cameras?

A. I thought you said that after he completed his statement, which was about 3:30, and you are saying 3:00 o'clock.

Q. I will take your time, when he completed it.

A. Yes, there were some people in the reception room.

Q. I see, and were some of those people—did you notice if there were any of those people in the squad room?

A. Not to my knowledge.

Q. Do you think that if they were in there, with your being in the vicinity of the building, that you would have noticed [fol. 678] if there had been someone in your squad rooms as opposed to the reception room?

Mr. Alexander: Objection. That is conjectural.

The Court: Objection sustained.

By Mr. Armstrong:

Q. Did you observe, to your recollection, the squad room after you finished taking the statement, after the defendant completed writing this statement?

A. I couldn't say that I recall what was in the next two rooms.

Q. Well, now, Officer Gravante, you told us that while this general questioning was going on, in which you did not your

self participate, you weren't asking any questions, that you left on an occasion to take a telephone call?

A. Yes, sir.

Q. I take it by that that you mean an incoming call?

A. Yes, sir.

Q. All right, and what was your reason for not—Strike that.

Was there a telephone in the Commander's office?

A. Yes, sir.

Q. What was your reason for not taking the telephone call there?

[fol. 679] A. It would disrupt the interrogation or the thoughts or questions that were being asked and answered. I would have to sit—to take the phone call, I would have to get behind the desk to utilize the phone that was there.

Q. And then also it would be difficult to be able to hear on the other end of the line with other people talking right at your ear?

A. Yes, sir.

Q. Then, when you went outside to take a phone call, do you recall whether you had a place to take your phone calls where other people weren't around? In other words, was there a place where you could talk in relative private?

A. Yes, I could go to the back squad room, or by closing the door, I could be alone in the second squad room. I could utilize either one of the squad rooms by closing the door to take a telephone call and be by myself.

Q. Well; now, I realize that you are familiar with these premises, and you are saying what you could do, but I was trying to direct your recollection to what you did do.

When you took the calls that came in between 1:15 and 2:00 o'clock is that what you did do, or is that what you are saying you could have done?

[fol. 680] A. I can't say what I did, counsel. I can't recall exactly what room I used.

Q. Well, I do not want you to tell me from whom you got the telephone calls and what was said, but perhaps if you could remember on that particular night from the investigation that you were doing where some of the calls came from, it might assist you in remembering.

A. No, sir. I received too many calls that evening. Whether they came in the interim from 1:15 a.m. to 2:00 a.m., I wouldn't be able to estimate, just when they came.

Q. Well, would it help you to remember the position of the newsmen; to recall whether you used the squad room or whether you went out in the reception room?

A. We would n't normally use the reception room office because that is where all the calls came in, and if you tie up that particular desk and phones for anybody to answer another incoming call would necessitate them going to one of the squad rooms, so all of our incoming calls are transferred from the reception office to one of the squad rooms, and our practice is to take incoming calls after they arrive at the reception desk, at one of the squad room phones, so in all probability I was utilizing one of the phones in the squad room.

Q. Well, is that your best recollection of what you did, or just your guess because of the circumstances?

[fol. 681] A. Well, it would be a recollection of what I would do normally in the course of receiving phone calls, and I imagine I did it that particular night.

Q. But you don't actually have any independent recollection of it, is that right?

A. No, sir.

Q. Now, while the defendant was writing this statement, were there people coming in and out of the room in which you were with the defendant, other than somebody who brought coffee in?

A. As I recall, the defendant and I were alone throughout that period of time, with the exception of the time we had coffee. My back was to the door. Whether somebody opened the door and looked in, I couldn't tell you.

Q. Well, I have asked you about after the defendant wrote the statement. During the time the defendant was writing the statement, do you remember seeing any of the newspaper reporters or photographers?

A. During the writing of the statement, I didn't see no one, no, sir.

Q. Now as to the newspaper writers and photographers, you know most of these fellows, don't you, that are on the police beat?

A. No, sir, I am not too familiar with them.

Q. Well, do you know some of them by sight that are [fol. 682] from particular newspapers that come around pretty often every time there is a story?

A. I know some of the faces of the newspapermen. As to their names——

Q. (Interrupting) You know them when you see them because they are around the station a lot?

A. Yes, sir.

Q. And you remember seeing some of them on this particular night and this evening and early morning hours? You already testified to that, I believe.

A. Yes.

Q. Now, my question is, do you recall at any time seeing any of them any place other than in your—what is marked "Reception Room"?

A. Well, at one interim during the time the defendant was writing the confession at approximately 3:00 a.m., I would say the defendant and I went to the restroom and when

Q. (Interrupting) Which door did you go out of the Commander's office to do that?

A. Right out through the reception office and down the hall and to the right.

Q. You went out what would be the south door of the Commander's office?

A. Yes.

Q. And through the reception room and down the hall [fol. 683] that points south on the diagram?

A. Yes.

Q. I am sorry. Go ahead.

A. And at that time there was nobody in the reception office when we passed through. However, I did observe some activity in a room further south, which is our traffic accident room. I noticed some people in there.

Q. Which would be a more southerly room than is indicated on the diagram?

A. Yes, sir, and I would assume them to be newspapermen.

Q. You didn't hear any activity or any of the familiar type of noise, people talking or making any sort of noise, in what is indicated as the squad room immediately to the west of the Commander's office when you took this trip with the defendant, is that right?

A. No, sir.

Q. Do you recall when you took the defendant down to the lavatory down the hall, when you went through the reception room and came back again, whether the door between the reception room and the first squad room to the west of the Commander's office was open or closed?

A. As near as I would be able to recollect——

Q. (Interrupting) I, of course, am speaking of this door (indicating), indicating the door that separates the west [fol. 684] part of the reception room from what is indicated as the first squad room west of the commander's office.

A. I wouldn't be able to tell you whether it was open or closed.

Q. You don't recall?

A. No, sir.

Q. Remembering this period of questioning between 1:15 and 2:00 o'clock in which you didn't take too much part in the questioning, as a matter of fact, during that time, that questioning was going on in the Commander's office, wasn't it?

A. Yes.

Q. Now, directing your attention to that, do you remember where you were seated while that questioning was going on, or were you standing?

A. Sometimes I was standing, and if somebody else left the room and there was a chair available, I would utilize the chair, but we didn't have sufficient chairs in the room, and I think that the majority of the time I was standing.

Q. During that period from 1:15 until 2:00 o'clock that the defendant was being questioned by these other officers, and you were more or less a spectator, there were newspaper reporters and photographers going in and out of the Commander's office, were there not?

[fol. 685] A. No, sir, not to my knowledge, they weren't.

Q. Well, were there any people at that time that—you say not to your knowledge as far as newspaper photographers or reporters, but any people going in and out of the Commander's office at that time that were not known by you to be police officers?

A. The only person that I saw that I had never seen as a police officer before entered through the side door right at the time that I joined the investigation at about the interrogation at about 1:15 a.m. He was later identified to

me as a doctor, but I did not know who he was, but other than that person, he was the only person that I didn't know in the room at any time.

Q. In other words, you were familiar with all persons that were in the room during that period from 1:15 to 2:00 o'clock except this one, and later he was identified to you?

A. Yes, sir.

The Court: We will take the afternoon recess at this point. Do not discuss the case among yourselves or talk to anyone about it or form any opinions or conclusions until it is finally submitted to you. We will take a ten-minute recess.

(Whereupon at 3:45 p.m. the afternoon recess was taken.)

[fol. 686] The Court: The jury is present, you may resume the stand.

By Mr. Armstrong:

Q. As I recall, the last thing we had discussed before the recess was the fact that during this period the questioning was going on you were an observer from 1:15 to 2:00 o'clock, and you said you knew all the people who were there except one man, and he was later identified to you?

A. Yes.

Q. And you knew that there weren't any other people in the room besides the man you knew, plus the one you subsequently met?

A. Yes.

Q. I will direct your attention to Page 320 of the daily transcript in this matter of Monday, November 21, 1955, and I will ask you to read

Mr. Alexander: Just a moment, will you please, Mr. Armstrong, what volume?

Mr. Armstrong: That is in Volume 4. I will ask you to read from Line 8, at Page 320, down through Line 23.

A. What were the lines again, sir?

Q. From Line 8 through Line 23.

A. (Witness perusing transcript.) Yes, sir.

Q. Beginning at Line 8, Pages 320 of the daily transcript: "Q. During that period of time——"

[fol. 687] Mr. Alexander: I object to this question, if the Court please, improper cross examination.

The Court: Objection sustained. The record is the best evidence. Any inconsistent statements made on direct examination as compared with cross examination or redirect examination are subject for comment in argument.

Mr. Armstrong: Yes, your Honor, but my understanding of the rule is that they are also, that they may be called to the attention of the tryers of fact, and it may be directed at the time that they are made.

The Court: That is a matter of argument.

Mr. Armstrong: All right, your Honor, I have no further questions.

The Court: Anything further?

Mr. Alexander: That is all.

(Witness leaves stand.)

Mr. Alexander: That concludes the rebuttal on the part of the People on voir dire.

The Court: Any further testimony from either party on that subject?

Mr. Armstrong: No, the defense has nothing further by way of evidence to offer on voir dire examination. The defendant would like to argue the matter to the Court.

The Court: Very well. We will do that outside of the presence of the jury.

Ladies and gentlemen of the jury, as far as you are con-
[fol. 688] cerned, you may take a recess at this time. Do not discuss the case among yourselves nor talk to anyone about it nor form any opinions or conclusions until the matter is finally submitted to you.

You will retire to the jury room and we will call you as soon as you are needed.

(Jurors retire to jury room.)

The Court: Under the law, the burden is on the People to show the free and voluntary character of the statement. Have you met that burden, Mr. Alexander?

Mr. Alexander: I believe we have, if the Court please, and may Mr. McCurdy argue that?

The Court: You may.

Mr. McCurdy: If the Court please, I would prefer at this

time to pass argument until I can hear the argument of the defense counsel, which I would like an opportunity to answer. I feel from the evidence presented here that the People have presented a case showing that the statement, document, People's Exhibit Number 18 marked for identification, was executed freely and voluntarily.

The Court: Mr. Armstrong.

ARGUMENT ON BEHALF OF DEFENDANT BY MR. ARMSTRONG

Mr. Armstrong: Your Honor, the defendant's position in this matter is that the statement was not freely and voluntarily made for the reason that the defendant was held incommunicado for a period of—I will attempt in this discussion to confine myself to the People's evidence, the [fol. 689] evidence from the People's witnesses, rather than from the defense, from a period of approximately 2:00 in the afternoon until 2:00 o'clock in the morning until the time of the taking of the statement began, so taking the most favorable to the People, for about twelve hours he was held incommunicado, and was not allowed to contact anyone else, and specifically was not allowed to secure the advice of counsel, although the testimony of the defendant is that he again and again demanded the services of an attorney.

Now, the People's witnesses have contradicted — the People's witnesses called on voir dire have contradicted this statement and these series of statements by the defendant except in two particulars: I do not have the page marked, but I think it could be easily obtained by glancing through Sgt. Gotch's testimony, and perhaps the Court recalls that when Sgt. Gotch was testifying that his testimony was that there was some conversation with respect to an attorney, and that the defendant had said that he would like to call an attorney, and Sgt. Gotch had assured the defendant that at such time as he completed the investigation——

Mr. Alexander: Just a moment.

(Short interruption while Bailiff brings a chair into jury room.)

Mr. Armstrong: While we are waiting, I would like to direct your attention to Page 360 of the daily transcript, [fol. 690] which is Volume 4.

The Court: All right.

(Proceedings again resumed, the jury being absent in the jury room.)

Mr. Armstrong: Beginning at Line 18, or beginning at Line 14, "I stated to him that after our investigation was concluded he could call an attorney, and if he didn't have funds to hire an attorney, when he went to court a public defender would be assigned to handle his case.

"He then stated that he had a friend who had been an instructor at Pepperdine College that would probably handle the case for him. I asked him who the name was, and he said it was a man by the name of Simpson, who lived in Long Beach.

"Q. He asked you if he could call an attorney at that time, and you told him that he could call after your investigation was completed, is that right?

"A. I told him after I was through with the investigation, he could make a call."

Therefore, according to the People's evidence, we do have, according to the People's witness's testimony, the police officers' investigation, the investigating officers involved in the case, according to their testimony, we do have evidence that corroborates the defendant's statements that he did make a request for an attorney.

[fol. 691] I think it is significant, too, that the Court note that this request was made while he was up in the Central Station area, which in point of time, by agreement of all the witnesses who have testified, was in the early evening hours.

Now, the fact is that they did not leave Central Station until—well, they left the Central Station sometime around from a period between 9:30 to 10:00, taking a sort of consensus. So, for several hours before any statement was made he voiced an expression that he did want an attorney.

I think with a little interpolation here on the Court's part, taking into consideration the defendant's testimony, the fact that he is a man who has had a certain amount of legal training, while not specifically on this point, and while certainly probably not versed in the practical matters of the law, at the same time his inherent intelligence and other things to be taken into consideration from the witness on the stand, I don't think it is unreasonable for the Court

to assume that a man in this position would want the advice of counsel before making detailed statements. And this is, of course, exactly what the defendant testified that he did all along. He kept saying, "If I can talk to an attorney, I will talk to you, but I don't know what I should say or what I shouldn't say."

And he was consistently denied the advice of an attorney. [fol. 692] Now, getting back to the defendant's statement, and even by the People's witnesses, Sgt. Gotch admitted that there was a conversation in reference to an attorney.

Now, when we get over to the polygraph examiner's testimony, Mr. Willis, we find again that there was reference made to an attorney, and the validity of this conversation on which Mr. Willis was somewhat vague was brought out by the fact that he remembered that he had been a college instructor, which, from the other testimony, shows that this was something that Mr. Willis talked to the defendant about, and that there was conversation about this same attorney that Mr. Crooker had been trying to get hold of, according to his own testimony, from the very beginning, and according to Sgt. Gotch's testimony that there had been a conversation about it while they were up in Central. So, that was while they were up at Central, even a little bit earlier, the matter of an attorney was mentioned, and again, taking the reasonableness of the testimony, the obvious context in which an attorney would be mentioned to this stranger to the investigation up to that point—a stranger to the investigation—so it would be fair to assume that the defendant's version of it is the truth: that he was asked to take this lie detector test and he said, "I don't want to take this test or answer any other question until I have talked to an attorney," as opposed to the lie detector examiner's version that he said he didn't want to take the [fol. 693] test because of the fact that he had a self preservation complex.

I think that it is more reasonable to assume that the only way this conversation could have come up with this particular man, was the defendant voicing the desire that he voiced throughout these proceedings, according to his testimony, that he wanted an attorney. And the reason that he didn't want to submit to any procedure, and the reason for

all of the explanations of the working of the polygraph went for naught was that, he said, "All right, your machine is fine, you get me an attorney and let him be here and I will take it, and I won't until that time."

So, there again I think he voiced his demand for an attorney.

So along these lines I would direct the Court's attention particularly to the case of People versus Stroble, 226 Pacific (2d); 36 Cal. (2d) 615.

Now in that case the Supreme Court refused to reverse a decision, although castigating the conduct of the police officers and the district attorney's office in a case almost weaker on its facts than this case. The Court said, "We won't reverse the case because of the fact that there was no showing that the defendant was prejudiced, because in this case, if the Court will recall it was a rather famous case in the newspapers, this Mr. Stroble had apparently kidnapped and killed this child in a rather cruel manner, cruel [fol. 694] and gruesome manner, and the Court pointed out that he was anxious to confess, that he confessed this thing over and over again. He confessed several times after he had seen his attorney, as well as having made a confession in the time that he was held incommunicado.

Now, in that case the attorney somehow or other got wind of the arrest and was waiting outside in the district attorney's office. And the message was sent in, he was waiting to see Mr. Stroble, and the district attorney's office was engaged in this conduct of theirs of taking a statement from a man and withholding his counsel from him. And they went ahead and took the statement and then they spirited Mr. Stroble out of the side door; never did let his attorney in to see him, and his attorney didn't get to see him until several hours later, after they had gotten their statement and had made their medical examination, and figured they had the case all sewed up. Then they allowed the attorney to see the client.

Now, the Supreme Court said, in refusing to reverse the case, that, "We are not going to reverse a case that is otherwise proper as a mere means of punishing police officers and district attorneys." Although it was strongly indicated in the opinion they certainly had some kind of punishment coming, although a footnote to the case observes

that no punishment was meted out because there was no action taken. But the Court's language here where they [fol. 695] say, "If the defendant had been confessing reluctantly, it would have been particularly important for him to know that he could have remained silent."

I particularly want the Court to note that this decision is a very recent one, a 1953 or a 1954 decision.

"Such flagrant misconduct and utter disregard of the rights of an accused by law enforcement officers deserves as severe condemnation, and if it appeared that it materially affected the regularity of the trial it would require a reversal."

In other words, it is dictum in the case, admittedly, but it is such strong dictum because of the particular facts and circumstances that it could almost be stated as the law, and certainly clue us as to what the Supreme Court would regard in a situation different on the facts, where a defendant while being held, and not being advised of his rights to remain silent, would have a statement made that was later attempted to be used against him in his trial, which would prevent him from having a fair trial.

Then the Court went on to state, "Before we could declare a denial that fundamental fairness essential to due process, we must find that the absence of that fairness materially affected the trial, and the conduct complained of must be of such quality as necessarily affected the trial, such as a [fol. 696] coerced confession, which is used as a means of obtaining a conviction."

Well, the Court's language in the case is precisely what our facts are here, according to the testimony of the defendant in the case, and taking the admissions of the police officers' testimony.

Then another case that was decided subsequently, I believe, I can tell by the citation, yes, considerably later, 253 Pacific (2d) 773, and 16 Cal. App. (2d) 278 the case of People versus Boyden.

The Court commented there:

"The right to have the assistance of counsel is too fundamental and absolute to allow courts to indulge in nice calculations as to the amount of prejudice arising from its denial."

And then in Glasser versus the United States, which is a Supreme Court of the United States decision, in 315 U.S. 60; 62 Supreme Court 457; 86 Lawyer's Edition 680:

"The right to counsel is protected by Article 1, Section 14, of our Constitution——"

I'm sorry, your Honor, I have inadvertently quoted from the wrong case. The last quotation was from the Glasser case.

The case of People versus Avilez, 194 Pacific Section 829. I do not have the California citation on this case:

[fol. 697] "The right to counsel is protected by Article 1, Section 13 of our Constitution. It was adopted to secure to the accused person all of the benefits which may flow from employment of counsel to conduct his defense. As in the Federal courts, it is considered a fundamental right without which there is no legal trial."

Now there was a subsequent decision to the Stroble case in which the Supreme Court again commented on this matter, and that case was Exparte McCoy 32 Cal. (2d) 735; 194 Pac. (2d) 531. This was a case where the Court said the petitioner made several requests for counsel, which were refused by the officers who had him in custody. By Penal Code Section 686, by the California Constitution, Article I, Section 13, in accordance with the due process clause of the 14th Amendment of the United States Constitution, a defendant in a criminal action is entitled to counsel in all stages of the proceedings; which the Court has held includes the investigative stages of the proceedings; in other words, at the time of the arrest.

Now in that regard I would direct the Court's attention particularly to the applicable sections of the Penal Code. Section 849 of the Penal Code, as the Court is well aware, directs particularly in the case where a person is arrested without a warrant, must be taken before the nearest and most accessible magistrate in the county in which the arrest is made. And a complaint stating the charge against [fol. 698] the person must be made before the magistrate. Then Section 825 of the Penal Code holds that a defendant must be allowed an attorney when the request is made.

And Section 8, Article I of the California Constitution says that:

"When the defendant is charged with a felony, he must immediately be taken before a magistrate who informs him of his right to counsel and allows time for counsel's appearance."

Now, here is a situation that the police find themselves in in this case: the officers testify that they placed him under arrest. The Court will recall the testimony of the officers, that the Hollywood officers came in, and there was testimony that they came in with drawn guns and informed the defendant that he was under arrest. This is a proper, legal way that an arrest may be made. And he was handcuffed and he was told that he was under arrest. Then the police officers involved in this case came in and they exchanged handcuffs; they took the handcuffs of these officers off and they put their own on, and they continued to inform him that he was under arrest.

Now, that may be a legal conclusion of the officer, but it seems clear from their conduct that they had made a legal arrest, and he was under arrest.

[fol. 699] Therefore, at that time, according to Section 849 of the Penal Code and the admitted testimony of the officers was that they had no warrant, it became their duty to take him before a magistrate and present charges against him, and if they had complied with this duty it would have followed as surely as anything that the magistrate, in complying with his duty, would have then informed the defendant as to his constitutional rights, which included having an attorney, and would have asked him if he wanted an attorney and would have allowed time right on the spot for a call to an attorney to have been made, and we wouldn't have this problem at all, because then the defendant would be unable to claim it, as the People claim, and the claim is not so, that he wasn't given an opportunity for counsel.

And then, once they booked him in and presented him before a magistrate, as they should have done, which would have been proper, then he couldn't be heard to complain at a later time that he had been denied the right to an attorney because he would have been presented, and he would have

had his opportunity to have counsel; which he didn't have in this case.

Now the other case to which I was referring, your Honor, is this Boyden case, which is 253 Pacific (2d), 773; and 116 Cal. App. (2d) 278, which I previously cited, and that is where the language came from where the Court said before [fol. 700] we can declare a denial of that fundamental fairness essential to due process we must find that the absence of that fairness materially affected the trial, and conduct complained of must be of such quality as necessarily affected the trial such as a coerced confession.

Now, your Honor, in that case the Appellate Court cited the Stroble case and said we are not reversing this case for the same reason that they did not reverse the Stroble case.

"We won't reverse a case simply to punish officers and district attorneys who misconduct themselves, if in other respects a fair trial was had.".

Now, in the Boyden case the facts were that a man had been held incommunicado for a period of about nine days. And while the Court castigated the officers for their conduct in the matter for doing this sort of thing, they pointed out that he made no confession or admissions during this period of nine days, and that his attorney, as a matter of fact, had had ninety days to prepare his defense after he was finally allowed to contact the man.

So while the Court remonstrated with the officers in the case for their absolute disregard of the rights of citizens, at the same time they said: "Here he wasn't hurt." But then they went on to say, and again I urge upon the Court the strongest of this dictum that before we can declare a [fol. 701] denial of a fundamental fairness of due process we must find the absence of that fairness materially affected the trial. They were looking forward to this very type of case, and saying, "Yes," in this case, "during the nine days Mr. Boyden was held incommunicado he had made a confession, and had that confession subsequently been used against him at the trial, then we would reverse. But since there was no confession and because his attorney did have ninety days to prepare his matter for presentation we can't say that his rights were affected to a fair trial, just that his civil rights were trampled on."

Now I believe that a check of that entire opinion will show the Court that that is the essential of the decision, and that that is the substance of the Court's remarks, both with reference to the previous case, the Stroble case, and as to their holding, and particularly this precise language which I am absolutely certain of because I copied it right from the case book.

The Court: It occurs to me, Mr. Armstrong, that perhaps at this point we should call the jury back and excuse them for the day.

(Jury resumes box.)

The Court: Ladies and gentlemen of the jury, we will excuse you at this time rather than make you wait around here. Let me caution you once again not to discuss the case among yourselves nor to talk to anyone about it, nor [fol. 702] form any opinions or conclusions until the matter is finally submitted to you.

As we indicated heretofore, there will be no session of this trial on Friday, tomorrow being Thanksgiving, we will resume the trial at 11:00 o'clock Monday morning. So you are excused to 11:00 o'clock Monday morning; have a nice Thanksgiving.

(Whereupon at 4:05 p.m. the jury was excused.)

(Proceedings resumed in open court in the absence of the jury.)

The Court: All right, all of the jurors have left the room. You may continue, Mr. Armstrong.

Mr. Armstrong: Your Honor, I think it is axiomatic that an involuntary confession is no confession. I have many cases to cite on that point, but I am sure that that point is conceded by all of us. I would like to call the Court's attention to another case, People versus Sewell, 95 Cal. App. (2d) 850; 214 Pacific (2d) 113. This is a case in which the Court said, "In holding that the fact that the defendant was not given the benefit of counsel at the time the confession was made, did not render the confession involuntary or inadmissible."

And there the Court said there is nothing in the record to suggest that he requested representation by counsel

[fol. 703] Thus indicating, I think, that if he had suggested it, the holding of that court would have been different, because they base their decision on the fact that there is nothing in the record to show that he indicated that.

Now again taking the case most favorable to the People, construing the evidence, all of the evidence that is most favorable to the People, which would mean disregarding the evidence of the defendant, which we may do for the purpose of this argument, there is certainly evidence in the record that he had discussed it, and that brings back into consideration the defendant's testimony again, and taking the whole record together there is very good reason to believe that this man not only discussed it but he demanded it as he alleged in his own testimony.

In 22 Corpus Juris Secundum 1435, in the work on criminal law, the writer says, "There is a custom of police officers persistently to question an accused when under arrest, which is not to be encouraged for the reason that he is rarely questioned with fairness, and the confessions thus obtained have been excluded in a number of cases where it appears that persistent questioning when taken in connection with the attending circumstances it is shown that the confession was not made freely and voluntarily."

And that quotation in Corpus Juris Secundum is cited in the California case of People versus Rogers, 293 Pacific 781; 55 Cal. App. 42. This was a murder case and in this [fol. 704] case the wife was denied an attorney. She was questioned at length and she made a confession. The confession was admitted in evidence. The case was reversed on appeal on the basis that this confession had been wrongfully obtained because of the fact that she had been denied representation by counsel when she requested it. That is People versus Clark.

The Court: I thought it was Rogers.

Mr. Armstrong: That is People versus Clark, your Honor, at 293 Pacific 781; 55 Cal. App. 42.

The Court: Incidentally, you need not give me Pacific Reporter.

Mr. Armstrong: All right.

The Court: Just the California citation.

Mr. Armstrong: All right, just the California citation.

Your Honor, there is some language in an older case,

however I found it cited right up through the 1955 decisions, of People versus Quam Gim Gow, 23 Cal. App. 507.

The Court: I have read that case.

Mr. Armstrong: Well, I would like to call the Court's attention particularly, the Court is aware, then, of the examination of the witness to which the Court referred; but this particular language, which has been cited with approval by the Court in subsequent opinions, "While no physical force was used, and neither threats nor promises made, there can be no doubt at all that the repeated questioning [fol. 705] by the officers, like the constant dropping of water upon a rock, finally wore through his mental resolution of silence."

And the Court will recall that in this case this defendant was questioned for ten minutes before he confessed, and this is the language that the Court addressed to ten minutes of questioning

"That the continual questioning, without any threats or promises wore through his resolution like water on a rock."

And the Court goes on to say:

"When did this unwillingness vanish and the desire to talk succeed it? Not after he had been given any period of time for reflection, his inquisitors allowed him none. Examination was persisted in until a response was forthcoming, and under these circumstances it must be said that the response was unwillingly made and as a direct result of continual importunity. The fact that the questioning was done by police officers", again citing the language of many of the decisions, "presents an important item for consideration in determining whether the admission extracted was of a voluntary character."

Now, while this does not automatically mean that a confession is involuntary because the questioning was done [fol. 706] by police officers, it is as this Court and other courts have alluded to this decision, it is one of the factors to be taken into consideration. The fact that the man didn't have any friends; didn't have his attorney; didn't have anyone else present at the time, and surrounded by police officers and certainly there is abundant evidence in this case that the defendant was literally surrounded by police officers at most stages of this proceeding, except for the

testimony of Mr. Gravante as to the fifteen minute interval from 2:00 o'clock to 2:15, and except for the testimony of Mr. Willis, from the time that he talked to the defendant alone, at all times he was literally surrounded by police officers.

In the case of Bran versus the United States, 168 United States 537, which report does the Court care for on that, the Supreme Court?

The Court: No, Lawyer's Edition, if you have it.

Mr. Armstrong: 42 Lawyer's Edition, 568.

[fol. 707] In this decision, it is just another facet that should be considered, and it is language that has been cited with approval in the California decisions, and that is this language from the Supreme Court:

"It is also clear that in determining whether the proper foundation was laid for its admission, we are not concerned with how far the confession tended to prove guilt. Having been offered as a confession, it being admissible only because of that fact, a consideration of the measure of proof which resulted from it does not arise in its admissibility," and I think we should bear that in mind, that it doesn't matter whether this confession is the most important piece of the People's case, or whether it is just an incidental piece of circumstantial evidence, that the rules are precisely the same on determining the admissibility.

Now, the other thing that obviously happened in this case, on which again I would direct the Court's attention to, is the fact that the defendant was, even in the District Attorney's office—now, certainly, before hearing these facts, it would have been my opinion that once a man got to the District Attorney's office, no matter what had happened to him at the hands of the police officers, he ought to have some sort of sanctuary there and be in a place where he could feel his [fol. 708] rights would be looked out for by the elected servant of the People, and yet the District Attorney would not even allow him to consult with his own attorney over the telephone in private without butting into the conversation, by the admission of the People's evidence—not by the admission of the People's evidence, but by the uncontradicted evidence as presented by Mr. Simpson, and I certainly believe that Mr. Simpson's credibility wasn't impeached in

any way by the prosecution, when Mr. Simpson said that he was having a conversation with the defendant and all of a sudden the voice that had been previously identified as Mr. Roll cutting right in the middle of what the defendant was saying and said, "Now, there has been no force used here. You know us better than that. We don't do that sort of thing, and everything is all right," so that he wasn't even allowing the man to confer with an attorney at that time, and it appears abundantly clear from the questions that were asked by the District Attorney in this thing that that conversation that the man was having with his counsel—one of our most sacred rights was being flagrantly violated there because of the fact that a recording was being made at least at one end, and I daresay there was a wire recording made of the entire conversation.

From the facts that we have before us, it would not be unreasonable to assume, although that is not in evidence, [fol. 709] that there was a wire recording of the whole thing, but the point is this, that at this time, when most of us would think that even if he had been abused before, that the man was secure, it would immediately become apparent to him that the District Attorney cared no more about his rights than the lowest cop on the beat cared about his rights in the room, the Detective room, or wherever he had been questioned before, because of the fact that the right that practically everyone who has ever had occasion to know an attorney or consult an attorney knows is inviolate, the right to consult with an attorney in private was flagrantly violated there. If Mr. Roll would do that, and apparently do it with impunity, how did the defendant know at that time that if he said anything inconsistent with what he said in his written statement, that he wouldn't be thrown back to these police officers to do with as they pleased, and the police officers could say, "Just a minute, Mr. Roll. We will take the defendant out the back door and bring him back in half an hour, and he will talk the way you want him to."

I am just talking about the fears that would go through a reasonable person's mind, as opposed to what you think would happen when you got to that place which most people would consider to be some sort of a sanctuary, so this flagrant disregard of his rights all the way throughout, from [fol. 710] the beginning, in denying his right to counsel, and

the circumstances of his arrest, the fact that he was arrested admittedly without a warrant, and there was ample time to present him before a magistrate, and to have him booked and advised of his right to counsel, in which case none of this inquiry would have come about. They didn't do that. They didn't do the things they were supposed to have done, and I think we can take notice of the fact that it is such a consistently done thing with our magistrates, that as a matter of—automatically the defendant would have been advised of his right to counsel and would have been allowed the opportunity to contact counsel at that time, as is provided in our State Constitution.

All right, we get past that. They didn't do that, and when, by their own admissions, he told them he wanted to talk to an attorney, Sgt. Gotch said, "You can talk to an attorney when I complete my investigation." When was that to be? How long was he going to sweat this man out? Would this go on for days and days and days and teams of officers relieving each other while the "investigation" was going on, and then finally when they had gotten everything they wanted, when the man would admit to anything, just to get them to let him alone, then they could say their investigation was concluded and let him call in counsel. The Court can [fol. 711] see the danger of allowing this sort of rule to be applied, that officers are entitled time to make an investigation. How much is a reasonable time before a man is entitled to call in counsel? I can see where the officers can say that in some cases that they would have to make a certain check of records, or do something before a defendant could call in counsel, but by their own admission to hold him for a period of twelve hours, while, by the testimony of their investigating officers, the investigation was going on, was certainly an extension of any privilege that they might have along those lines to make their investigation.

Now, I can't close this without commenting briefly on the testimony of this jailer. That, in my estimation, was as clear a case of perjured testimony as we will see in a long time, and I not only think it was perjured testimony, but I think it was deliberate perjured testimony for this reason, that we have this testimony about being denied an attorney, and being denied the right to counsel, and we have got an alleged confession that was made in the District Attorney's

office, and we have got a conversation that he couldn't make a phone call. So, the thing to do is bring a jailer in here and say, "I gave the man the opportunity to make a phone call, and he didn't even want it, didn't even avail himself of it." [fol. 712] Now, in the first place, the officer's initial statement of the matter was, "I remember the defendant because it was a celebrity-type of case." I submit that if he remembered him well enough to remember this little piece of trivia, which would have been trivia to him at the time, that he would have remembered him well enough to know how long he was around. He said, "Oh, he was around for a week or ten days." As a matter of fact, he saw him on the 6th and on the 7th. He was off the 8th and the 9th, and the records will show that the defendant was booked in the County Jail on the 8th of July, so the officers didn't see him. This officer that testified here only saw him on two days at most, if he saw him on those occasions.

Then he says that there weren't any people on the 7th, and I think the Court could almost take judicial notice, from the newspaper coverage of the arraignment in this matter, that there must have been an awful lot of photographers present, or at least there was one generous photographer present giving out all his pictures to the wire services of the newspapers, because there were photographers on the 7th, but where the lie was given in the man's testimony was that he said, "I remember the conversation was on the morning of the 6th, and I remember that we talked about his family, and I remember his sister wanted to come out here, but he [fol. 713] didn't want her to come out because he didn't want to drag her into this, he didn't want her involved in all this scandal."

This was the conversation that was alleged to have taken place on the morning of the 6th. Now, by the officer's own testimony admittedly the defendant wasn't allowed to use the telephone, wasn't allowed to contact anybody from the time that the officers came into his apartment with drawn guns until the conclusion of the matters out at the McCauley home, which was in the wee hours of the morning, at which time they booked—he was booked up at the West Los Angeles Jail, so he hadn't had any opportunity to discuss any matter with his sister or anybody else, and talk about whether or not his sister should or shouldn't come out here

to California, or come out from wherever she was to see him, for reasons that he didn't want to drag her into the mess, or any other reasons at all. He hadn't talked with anybody at that time in his own family. The only people he talked to was police officers, so the fact that this officer says that that was the conversation shows that that officer's testimony was a lie, and I contend, your Honor, that it is consistent with the actions here and that it is a further reason for discrediting the testimony of the police officers and all people concerned with the investigation of this case. It [fol. 714] shows the lengths to which these people will go. It almost reminds one of the moot court cases that we used to have in law school where we didn't stipulate to enough facts so that anything could be brought into the case. There was no regard for the facts, just whatever you need, find, bring someone in, and that is what it almost appeared when this officer came in here and made this testimony, which was such a glaring inaccuracy, and fortunately he tipped himself, as many liars do, by going a little bit too far in his testimony, so I submit, the Court shouldn't regard that testimony in this consideration of the defendant's rights, and whether or not he had any right to contact an attorney or not, which, if that testimony were taken as true, why, it would give the lie to all of the defendant's testimony because here, if he were still trying his hardest to get ahold of an attorney to represent him, he certainly would have jumped at the chance had anybody offered him a chance to make a telephone call, and yet if we believe this jailer's testimony, the defendant said, "I don't care to call anybody. I don't have anybody, and my family is in the East, so I don't want to call them," and then he goes on to have this conversation about his sister. I submit the testimony of that particular witness—that it should be completely disregarded.

Now, as to the matter of the law and the decisions on the [fol. 715] matter, I feel, your Honor, that the decisions in the two cases cited, the Stroble case—the two first cases cited, and the Boyden case, pretty well contemplate this situation. While they don't cover it specifically because of different facts, they contemplate it in what the Court says, and I feel that for that reason this confession cannot be said, in

the language of those decisions, to have been freely and voluntarily made.

Now, the Court will notice that I have avoided talking about any evidence of alleged brutality or any evidence of striking because I have been trying to confine this as a question of law to things taken most favorably by the People's witnesses' testimony insofar as we can, except where there are patent discrepancies, such as the testimony of this jailer that I have referred to, and I feel that from all the rights that are established as just things taken for granted in our Constitution and in our system of things, that this defendant's rights were trampled upon, and under no circumstances can this confession be said to be one that was freely and voluntarily made under these circumstances.

The Court: Mr. McCurdy.

Mr. McCurdy: If the Court please, I take it your Honor is not interested in the recital of the facts or as one side would [fol. 716] view the facts, but the possible applicable law, because the questions addressed to your Honor at this time is not necessarily a factual one. It is a legal question.

Your Honor has the duty as Judge to pass upon the admissibility of the confession first as a matter of law. To that point I will address my remarks to your Honor.

The case of People vs. Stroble has been mentioned here. It appears in 36 Cal 2d. It occurred sometime in the recent past. I call your Honor's attention to these factors with respect to the Stroble case. They are entirely dissimilar from the situation which is now before your Honor, and incidentally, the only thing that is before your Honor at this time is the admissibility of Exhibit No. 18. As to any other possible statements that may have been made by the defendant at a later time, those are not before your Honor, only Exhibit 18.

Mr. Armstrong: Pardon me. I think perhaps you were not at the bench when we discussed this matter, Mr. Alexander and I, and we agreed that this voir dire inquiry would extend to any statements that were made at the Police Department and the McCauley home, and any statements made in the District Attorney's office.

Mr. McCurdy: I was present, and I recall that, and I [fol. 717] reiterate my statement. The only thing before his Honor at the present time that he has to rule on is the

admissibility of Exhibit No. 18. At a later time, he might have the opportunity to rule upon something else.

Mr. Armstrong: I see.

Mr. McCurdy: Now, with respect to the Stroble case, I call your Honor's attention to this factor which is different from the one before your Honor. In the Stroble case, a complaint had been issued and there was a warrant for the arrest of the defendant. At the time of the arrest of Stroble—and it wasn't uncontradicted — it wasn't contradicted, rather, there were acts which were characterized by the Supreme Court of California as repeated acts of battery. The park foreman slapped him, as I recall the facts set forth in the report, and in the process of the search in the Stroble case, the officer who conducted the search for weapons was criticized. At the time Stroble was talked to in the District Attorney's office, I believe the record of the Supreme Court shows that there were nineteen police officers and five stenographers present. Those factors, I feel, are entirely dissimilar to the case which is now before your Honor.

I direct your attention to Section 825 of the Penal Code which provides, in substance, that when a man is arrested [fol. 718] without a warrant, he shall be taken before a magistrate in no event longer than 48 hours, in other words, two days. So there is no evidence in this case that this man wasn't taken before a magistrate within the time period specified in Section 825 of the Penal Code, and I defy counsel to show in the record where that section has been violated.

The officers certainly—when they make an arrest—have the right to complete their investigation. I call your Honor's attention to these facts that were testified to here, both by the defendant and by various witnesses also called by the defendant, certain police officers. The defendant was arrested. The officers left his premises sometime around 4:00 or 4:30 in the afternoon and went downtown.

I think your Honor could almost take judicial notice of the facts that after 4:00 o'clock downtown it would be rather hard to find a committing magistrate. Anyway, the officers didn't go or didn't try to find one. They went over to the Crime Lab where various phases in the investigation were undertaken. They have testified that, and so has the defendant, that photographs were taken, that he was taken to the polygraph technician, that he was taken food, that

he was taken back to the station, and while at the station he was talked to. He was given cigarettes. He was given coffee, [fol. 719] and he was booked in jail. Those are all proper procedures, and he was talked to while at the jail.

The Stroble case has nothing to do whatsoever with this situation. I call your Honor's attention to these cases which stand for these propositions, the fact that the prisoner wasn't given the benefit of counsel or that he wasn't advised of his right to counsel at the time the confession was made, does not render the confession involuntary or inadmissible. Those are People vs. Sewell, 95 Cal. App. 2d, at 850, People vs. Pongetti, 72 Ca. Appellate 2d, and People vs. Hoyt, 20 Cal, 2d, 306. The mere fact that a defendant is under arrest at the time a confession is made does not render the confession inadmissible. Here, the defendant was informed, according to the testimony of Officer Gotch, that when his investigation was complete, he would be—he could contact any attorney he wanted, and the evidence, I believe, shows that in the District Attorney's office, when he made a request there, he was permitted to talk to an attorney upon the telephone. What more can the defendant ask of the District Attorney than that? "I want to talk to an attorney." The District Attorney gets the man on the telephone and says, "Go ahead. Take this particular phone and go ahead and talk to him." That was done. He had the opportunity to talk to counsel, and counsel did see him, if I [fol. 720] remember the evidence correctly, later on the same night. If I am arguing outside the evidence, I apologize for it, but I think there is no doubt about the evidence that counsel did see him and that counsel did talk to the defendant, and the District Attorney made that possible, for the defendant to talk to counsel Ray Simpson.

Now, I state to your Honor that I feel rather strongly relative to the charges made about the District Attorney here, and I also feel strongly relative to the characterization of the testimony of certain of the witnesses, nevertheless, I submit to your Honor that this defendant was legally arrested, that no force or violence was exercised upon his person, and that the resulting statement which he made was executed freely and voluntarily, and in no deprivation of any constitutional right.

The officers had forty-eight hours to take him before a

magistrate. They completed their investigation in the meantime. He was permitted to talk to counsel.

The Court: Let me ask you, do you approve of the District Attorney listening in while the client talks to an attorney?

Mr. McCurdy: Your Honor, there is no evidence that the District Attorney listened in to the attorney's conversation. There is evidence before your Honor in which the District [fol. 721] Attorney could certainly hear what the defendant said because he was in the same room, but there was no evidence that the District Attorney was actually listening to the conversation.

The Court: Let's put it this way. Do you approve of the District Attorney, so long as he made the contact with the attorney, for the defendant, to not make available to him a private opportunity to talk with his attorney?

Mr. McCurdy: Your Honor, he wasn't asked to do that. As I understand the testimony—as far as I know—he used the facilities in that office. I wasn't there.

The Court: As a law enforcement officer and a lawyer, should he have volunteered to do so, whether asked or not?

Mr. McCurdy: I don't know of any obligation upon the District Attorney to do that, your Honor. If the defendant or Mr. Simpson had requested it, I am sure that that would have been made available in some other office, but that is a point that we are not concerned with now. The immediate problem is No. 18.

The Court: Anything further?

Mr. McCurdy: Nothing further at this time, your Honor.

The Court: Do you have anything further?

[fol. 722] Mr. Armstrong: Yes, your Honor, I do. It is my opinion, your Honor, and I think it isn't unreasonable to assume, from the type of questioning that was going on, that it wouldn't have mattered if the District Attorney had absented himself completely from the room, because I am under the impression, and I believe from the evidence that I heard here, that there was a wire recording at both ends of that conversation going on, and the District Attorney could have been over at the Hall of Records, and he would have still had all the information that he needed in his office before him after that conversation was over because he recorded the whole thing on wire.

Now, I believe that—although it isn't in the record because of the type of questions——

The Court: (Interrupting) Let me ask you. He did talk to an attorney. There is no evidence, is there, that the attorney said, "Don't tell them anything. Don't talk to them any further until you talk to me"?

Mr. Armstrong: There is no evidence to that effect, no. Now, your Honor, in the Sewell case which the People cite as to the proposition that a confession is not inadmissible because of the fact that the defendant didn't have counsel or wasn't advised of his right to counsel, that was the very case that I earlier cited to the Court in which the Court said, [fol. 723] "Here it appears that there was no request or demand made for counsel by the defendant."

So obviously the case is a distinguishable case. Judge Fricke cites it in his book as being a case to show this particular proposition, but the qualifying language, and the Court makes it practically clear, that in the reverse situation where a request had been made and denied, that the Court would have gone along with the vast weight of authority from the United States Supreme Court down to the state courts, and said that this confession could not, under these circumstances, have been freely and voluntarily made. In fact, the People and the defendant both cite the Sewell case.

I would be very interested in the Court using that case as a criterion for making your ruling because I think that that supports the defendant's position, and yet the People cite it. The People cite it to the broad rule, without the necessary qualification, and if we are going to read only head notes to cases and not look at the facts, we can't cite them to the applicable rules of law.

That brings me to the citation of the Stroble case where counsel, in effect, accuses the defendant of misapplying it, and he cites all these additional factors, such as the fact that Mr. Stroble was beaten up, and such as the fact that there [fol. 724] was all of these officers present in the room. If the Court will reread the Stroble case, the Court will see that in the consideration of his denial of his right to an attorney, these factors aren't even mentioned. They are not taken into consideration. The Court is considering only one set of circumstances. That was the fact that an attorney

had requested to see his client, not the client requesting to see an attorney.

There is no evidence that Stroble even made that request, that he even asked to see his attorney, but the attorney was outside and asked to see the client, and instead the client was continually interrogated in the District Attorney's office until they got what they wanted out of him and then they spirited him out the side door and they kept counsel away from the defendant for several hours after they were finished with him, and then they said, "Now we are through with him," like Sgt. Gotch would say, "Our investigation is completed. You can now talk to your client, and so I think that the Stroble case, rather than being inconsistent on the facts, was much weaker on these particular facts than this case, because here the uncontradicted evidence, if we take the lie detector's man and Sgt. Gotch's word and the defendant's word on these three particular points, on the two points where they coincide, Willis and the defendant both say they had a discussion about an attorney.

[fol. 725] It is reasonable to assume that the defendant wouldn't have brought it up if he didn't want one, particularly when he testified he talked to Gotch about it awhile ago, and Gotch corroborates that there was a discussion about an attorney, so it must have been on the defendant's mind, from the People's own testimony, that he would have talked to Gotch, and then just a few minutes later talked to Willis, or just the other way around, talked to one and talked to the other, and if he hadn't even renewed his request after he talked to Gotch, I still think his rights would have been trampled on because it would have been reasonable for the defendant to assume, what is the use to keep asking for it? I have asked once and he told me no, and he told me why he wouldn't given it to me, but according to the defendant's testimony, he persisted, but on the facts of the Stroble case on this particular point, the facts are even weaker than they are here, and in the Stroble case the language is picked up in the Boyden case, and there they refer to this precise situation because in the Boyden case there was no confession and they were just talking about a violation of civil rights, and in the Boyden case they projected themselves into this situation and they said, in the Crooker case, the facts would compel a reversal, if the confession were admitted, so that

is why I contend, your Honor, that the only proper thing to do is to exclude this confession, this purported confession from evidence at this time.

[fol. 726] The Court: I hate to leave you cliff hanging over the week-end, but I will have to read these cases that you have given to me.

We will adjourn at this time to 11:00 o'clock Monday morning.

(Whereupon at 4:35 o'clock p.m., this date, an adjournment was taken until Monday, November 28, 1955.)

[fol. 727] Santa Monica, California,
Monday, November 28, 1955

11:00 O'Clock A. M.

The Court: The jury is present in the Crooker matter.

Mr. McCurdy: There is one matter I would like to call to your Honor's attention. I have some additional citations which I would like to give your Honor in the absence of the jury.

The Court: The matter we have before us at this time is the objection to People's Exhibit 18. That objection is overruled.

In admitting this document, ladies and gentlemen of the jury, the Court is merely holding that, as a matter of law, a sufficient foundation has been laid for it to be placed before you. The Court does not pass finally on whether the instrument was freely and voluntarily given. Whether you will consider it at all, or if so, what weight should be given to it, are factual questions for you to determine, subject to certain rules of law. Before you begin your deliberations, that is, after all the evidence is concluded, and the argument has been made, the Court will instruct you in the applicable law.

You may proceed for the People.

[fol. 728] Mr. Alexander: I believe Gravante was on the stand, if the Court please.

FRANK GRAVANTE, called as a witness on behalf of the People, having been previously sworn, resumed the stand and testified as follows:

The Court: You have already been sworn?

The Witness: Yes, sir.

Mr. Armstrong: There are no other witnesses present in the courtroom, I take it?

The Court: Are there any witnesses in the case of People vs. Crooker? If there are, please remain outside until called.

Mr. Alexander: I take it People's Exhibit 18 has been accepted in evidence?

The Court: That is correct.

Direct examination.

By Mr. Alexander:

Q. Now, Mr. Gravante, would you be good enough, please, to read People's Exhibit 18 to the court and jury?

A. The statement is dated Wednesday, July 6, 1955, the time is 3:30 a.m. The statement states: (Reading)

"I, John Crooker, on Monday, July 4, 1955, attempted to communicate with Norma T. McCauley to talk with her and [fol. 729] discuss the reasons and feelings for her rejections of our close and intimate relationship of nearly two years standing. As exactly as I can recall the following facts constituted the sequence of events which culminated in her death. I left my place of residence at approximately 3:00 o'clock p.m. and drove toward her residence. I may have stopped for gas on the way and arrived at the entrance of Bel Air at approximately 4:00 o'clock. I drove directly up past her home, saw her car in the garage and saw her two eldest children playing on the neighbor's lawn. Realizing the futility of continuing my attempts to talk with her at that time, I drove back down past her house, by her parents' residence, stopped to note some activity of bathers at their pool, and then proceeding to a vantage point on that side of the canyon. From there I watched until she drove down the road toward her parents' home.

"I then drove down to the Stone Canyon Drive entrance to Sunset, up the west entrance again and past her home

again. I then drove down to the U.C.L.A. parking area and called a Yellow cab and was driven to her residence. I went around the house to the rear and entered by the door at [fol. 730] the children's room. Then I waited until she returned with the children in the early evening hours. I hid in a closet in the children's room, waiting until they were asleep. Norma came home about 12:00 or 1:00 o'clock a.m. She was followed home by some other car. The other car's occupant waited until she closed her garage door and went around, opening her front door, and then drove away.

"I waited in the children's room until she was in her own bedroom. Then I opened her door, which was ajar. Norma was stunned to see me but she remained remarkably calm and self-contained. I, on the other hand, was extremely nervous and generally unable to make myself realize that I was there in her room and had taken the means described to see her.

"We talked for over an hour. Norma had been out, had some cocktails and felt sleepy. I tried again, as I had tried many, many times before by telephone and by letter to get her to tell me her reasons and feelings for leaving me. I told her that I could not believe that my threats were the answer. But Norma would not talk about it. I sat near her on the chaise lounge, smoking one cigarette after another and every few minutes going close to her to see whether or not [fol. 731] she was really sleeping, and I think she was at least dozing. And I didn't know what to do. For days and days I had not known what to do. I had tried threats and coercion and profession of my feeling for her. She had rebuffed all my attempts and now she was going to sleep.

"On the dresser by the door to her bedroom were a child's toy revolver and other things. I found a kitchen-knife about ten inches long with the blade about six inches. I took the knife and went back to the chaise lounge. Then I put the knife in my coat pocket and knelt beside her for what seemed to be a long time. She was asleep. I took her throat in my hand and she awoke and started to scream. I heard the maid,—so I reached the knife in my pocket while holding my hand over her mouth. Then I hit her with the knife and pushed and pushed on it but she still made sounds and struggled on the lounge. I choked her more with some clothes around her throat and after a long time she was

still and the house was still, and I couldn't realize that Norma was gone. I took the knife, her car keys, and some money and thought I must take her car and go, but I walked [fols. 732-746] and walked and walked. The dawn was coming when I reached my car, got in, drove home, took off my clothes and threw them into the incinerator. I went to bed and must have slept some because shortly before noon I couldn't sleep any more. I just waited for time to run out.

"Somewhere along the way I must have thrown out her keys and the knife because I didn't have them in the things I threw in the incinerator. I took some money from her purse and her keys to her car and the knife with me.

"John R. Crooker, Jr."

[fol. 747] Jack Gotch—Recalled

Direct Examination.

By Mr. McCurdy:

Q. Officer, directing your attention to the early morning hours of Wednesday, July 6th of this year, did you leave the West Los Angeles Police Station and go to 1100 Somera Road sometime that morning?

A. I did.

Q. At approximately what hour of the morning was it on Wednesday, July 6th, that you left?

A. Shortly after 3:30 a.m.

Q. And did anyone go with you at that time?

[fol. 748] A. Yes, sir.

Q. What persons?

A. Two cars went up to 1100 Somera Road. In one car was the defendant Crooker, Lt. Armstrong, Sgt. Hooper, and Inspector Kerr. I followed in another car with Officer Paige, who was going to make photographs for us.

Q. When you arrived at that location where, if anywhere, did you first go?

A. We first went to the—may I turn that map around?

Q. Sure.

The Court: Pull it out further.

By Mr. McCurdy:

Q. Now Officer, would you stand down here with the pointer, and by using People's Exhibit 9 in evidence, will you show us on that map where you first went?

A. We drove and parked in front of 1100 Somera Road. The defendant was asked to—he had been asked at the station if he would go to that location and re-enact what had occurred and what he had explained in his confession, so on our arrival there the defendant directed us to go down the side of the garage—there is an embankment here (indicating)—by the side of the garage, continuing around here (indicating), around what would be the rear of the house, and up through here to a gate (indicating). There is a fence that runs around this front yard. There is a gate here (indicating). He directed us here (indicating), and he [fol. 749] stated that this is the door which he had entered 1100 Somera Road.

Q. Now Officer, you are pointing to a door that is marked on the diagram D-1, is that correct?

A. Yes, sir, that would be the northeast.

Mr. Armstrong: Pardon me just a moment. May we approach the bench again, your Honor?

The Court: Very well.

(The following proceedings were had at the bench and out of the hearing of the jury:)

Mr. Armstrong: Your Honor, in that this witness is now beginning to tell about re-enactment, that is, directions and the defendant said, "This is the door I went in," I wish for the record to make an objection at this time to this testimony for the same reasons to which the entire voir dire inquiry was directed, to protect my position here, that we object to anything in the nature of any admissions that were made by the defendant on the scene. Specifically, I object to anything that this witness is saying now until a proper foundation is laid for what he is saying. The Court will recall it was Officer Gravante who qualified on the other foundation evidence, but on the basis of our entire voir dire inquiry—even with that technical objection out of the way—I wish to object to the entire offer as to anything that the defendant said or did of an incriminating

nature on the premises at 3:30 or later in the morning of [fol. 750] July 6th of this year.

The Court: The objection is overruled.

Mr. Armstrong: Now as to the first objection, your Honor, that these conversations as to what the defendant directed them to say and do, are without proper foundation. Would the Court rule on that one, too?

Mr. Alexander: Well, probably, your Honor, we should ask this witness those foundational questions, and I think it might be a better idea if we ask the witness.

The Court: He has given the time and place——

Mr. Alexander: (Interrupting) Whether it was free and voluntary, any force or duress. It may be a better idea that we do that.

The Court: You may inquire.

(The following proceedings were had in open court and in the presence of the jury:)

By Mr. McCurdy:

Q. Now Officer, at the time of your arrival—during the time that you were at this location of 1100 Somera Road on the morning of Wednesday, July 6th of this year, were there any statements of the defendant made at that time—were they all made freely and voluntarily?

A. They were.

Q. Was there any force or violence used, or threatened to be used upon his person at that time in order to induce him to talk to you at that location?

[fol. 751] A. There were not.

Q. Was there any duress exercised upon the defendant at that time?

A. There wasn't.

Q. And everything that occurred there was freely and voluntarily done by the defendant?

A. It was.

Q. Now Officer, will you step down to the diagram, People's Exhibit 9 in evidence again? I believe that you mentioned you were at the door to the nursery or children's bedroom marked D-1, is that correct?

A. That is correct.

Q. What happened or occurred there?

A. The defendant stated that that was the door that he had entered. That it was open when he tried it, and he went in.

Q. What, if anything, next happened or occurred while you were at that location?

A. We had made a call to the Thompson home prior to leaving the station to have somebody meet us there to let us into the house.

Q. Was that person there when you arrived?

A. The person wasn't there when we arrived.

Q. What, if anything, did you do then?

A. We attempted to gain entrance. We were unable to do so at that time, so we—Sgt. Hooper and I—forced this [fol. 752] window here (indicating) in the maid's room.

Q. By that, you are pointing to a window on the diagram. The room is labeled "maid's room"?

A. Yes.

Q. And there appears to be two windows there, is that correct?

A. That is correct.

Q. Which one, the one nearest to the east or the one nearest to the west?

A. The one nearest to the west, to the best of my recollection. I am not sure. It was one of those windows.

Q. What happened at that window?

A. We entered—Sgt. Hooper entered through that window, and came through and opened the door for us.

Q. Which door did Sgt. Hooper open?

A. D-1.

Q. How did you gain entrance to the window in the maid's room?

A. Forced the window.

Q. How did you force it?

A. Just got it by our fingers. There is a swing window hinged on one side, and it was open. It has one of those crank openers on it, and you take it by the edge. You can force it out.

Q. Did you use any iron bar or piece of pipe or anything of that nature in order to open that window?

A. I didn't have any.

[fol. 753] Q. In other words, it was done with the hands?

A. Yes, sir.

Q. Now, Hooper went in the place, is that correct?

A. That is correct.

Q. Which door did he open for you?

A. Door D-1.

Q. And what, if anything, happened or occurred after door D-1 was opened by Sgt. Hooper?

A. We all went into the children's bedroom and we asked the defendant to point out where he had hidden in that room. He said he had hidden in this closet which is initialled "F" here.

Q. You are pointing to the closet at the bottom of the room labelled nursery, and it bears the designation in pen and ink, "F," is that correct?

A. That is correct.

Q. What, if anything, happened or what occurred at that place?

A. We took a photograph of this particular closet.

After pointing out that closet the defendant then went into the closet which is initialled "B," which is also in the nursery, and stated that when Norma McCauley had arrived home, that he had left this closet and had gone over to this point where he had opened it—I suppose it would be the left-hand door as you face the closet, and hidden behind [fol. 754] this door, in the event she would come in to see if the children were all right, which she didn't do.

So after a short interval he then directed us from the nursery to the hallway into the room which had been occupied by Norma McCauley.

Q. What, if anything, happened or occurred there?

A. On entering that room he designated this dresser, which is marked three feet eight inches high.

Q. That is the dresser on the left side marked as you enter the door?

A. Yes, designated as three feet eight inches high. He told us that that is the point where he had found the knife. He then directed us into the bedroom. We sat down on the bed. He stated that after entering that room and talking to Norma McCauley, and they did converse for quite a while and she appeared to be falling asleep and not paying attention to him, and that she had fallen asleep, and that he had gotten up; they had both been seated on the chaise

lounge—and that he had gotten up from the chaise lounge and had gone to the bathroom. On returning from the bathroom to continue the conversation, that is the time he found the knife, he stated he had the knife in his pocket; he did not know why, but that he knew that he wanted to have Norma continue the conversation, in trying to effect a [fol. 755] reconciliation—that he was going to continue that conversation.

He said he then returned to the chaise lounge. Norma was still asleep and he attempted to arouse her, and put his hands around her throat, and she awoke and began to struggle and let out a scream.

He put his hand over her mouth, reached into his pocket and pulled out the knife and pushed it in her. We asked him what he meant by "pushing the knife in her." He said he stabbed her a number of times; he did not know how many.

Q. You may resume the stand, Officer, and I think you will be more comfortable there.

All right, will you please continue with what happened or occurred in the bedroom?

A. He said she continued to make noises and move about, and that he used the clothing that had been around her shoulders, tied it around her neck and choked her with it.

He said he stayed in that room for approximately one hour after this had all occurred. That he had heard the maid get up and he heard the maid in the hallway. He stayed there about an hour and said he had wiped the knife off, the blood off the knife with his handkerchief, and that he had put the knife back in his pocket.

That he had gone through the purse belonging to Norma [fol. 756] McCauley and had taken the car keys from the purse, and also some money that was in a clear plastic purse, in a larger purse.

Then, after the waiting he had gone out in the hall, past the entrance hall into the kitchen, and out the kitchen door and into the garage; but he had decided against taking the car belonging to Norma and stated he had walked back

where his car was at U.C.L.A. He stated on his way back he had apparently, to the best of his knowledge, thrown the knife and the keys away.

We then took the defendant, after taking pictures in the bedroom of Norma McCauley, we then took the defendant to the kitchen and attempted to have him point out a knife that was similar to the one which he had used. He described the knife as being similar to a steak knife, and pointed out a number of knives, but there was none in the kitchen that he stated was the one that he used. As a result, none were taken. We then—pardon me, if I may back up——

Q. Surely, Officer.

A. During the time we were in the—I believe it was the time we were in the nursery and Mr. Smith, I believe his name is Smith, who is an employee of the Thompson family there, he was at their home that night, had arrived and had come in the front door with the key and observed the activity that was going on at that time.

[fol. 757] Q. After you finished in the kitchen, where, if anywhere, did you and the defendant then go?

A. The defendant and I were in the kitchen and the other officers were outside waiting for us, and Mr. Smith was waiting at the front door for us to leave, and we left Mr. Smith, closed the premises, and we returned to the station, and I booked the defendant back in the jail.

Q. About what time in the morning was that, approximately, Officer?

A. I know I booked the man back at the jail at 5:00 a.m., so it must have been around 4:30; 4:00 to 5:00.

Q. Calling your attention to the closet in the children's nursery, the one labelled "F", did you make any measurement of the size of that closet?

A. I did.

Q. Will you tell us the measurements of the interior of that closet, sir?

A. I have got them down; may I refer to them?

Q. You have got them written down?

A. Yes.

Mr. McCurdy: Does counsel want to see his notes?

Mr. Armstrong: Yes.

[fol. 758] Cross-examination.

By Mr. Armstrong:

Q. These notes you made on November 9th, is that right?

Mr. Alexander: I did not hear that question.

Mr. Armstrong: I asked him if he made the notes on November 9th, to which he said yes.

Mr. Alexander: November 9th?

The Witness: Yes.

By Mr. Armstrong:

Q. You made these notes as you made these measurements?

A. Yes.

Q. You had the paper there, and as you made the measurements you wrote them down?

A. Yes.

Mr. Armstrong: All right, I have no objection.

Direct Examination (Continued).

By Mr. McCurdy:

Q. When you made the notes was the closet in the same condition on the morning of the 6th of July of this year as it was when you made your measurements and your notations?

A. Yes.

Q. Go ahead, give us the measurements.

A. The measurements of the closet is two feet in depth, [fol. 759] five feet four inches from the floor to the shelf; five feet two inches wide. It is a three-quarter inch width board, which makes the shelf at the top—there is an area of one foot between the shelf and the top of the closet. There is a raised floor at the bottom of the closet three and a half inches off the floor.

Q. Did you make measurements at that time of the width of the doors to the closet?

A. I did.

Q. Will you give us that, please?

A. The width of the right door is two feet two inches;

the width of the left door is two feet two inches; the height of the closet doors are six feet nine inches.

Mr. McCurdy: If the Court please, I have here a photograph. This photograph appears to show a portion of an interior room, and in particular a closet with two doors open. There is a gentleman standing on the left portion of the picture. May this be marked People's Exhibit next in order, No. 24 for identification?

The Court: It may be marked People's Exhibit No. 24 for identification.

Mr. McCurdy: I have here another photograph which, for the purpose of description, it appears to show the entrance-way to a room, and standing in the foreground are two men; may that be marked People's Exhibit No. 24 for identification?

[fol. 760] The Court: It may be marked People's Exhibit No. 25 for identification.

Mr. McCurdy: I have another photograph. This appears to show a portion of the interior of the bedroom, and standing in the foreground of the picture are two men. May this be marked People's Exhibit No. 26 for identification?

The Court: It may be marked People's Exhibit No. 26 for identification.

Mr. McCurdy: I have another photograph. This photograph appears to show a portion of the interior of the bedroom, and there are three persons in the room at the time. May this be marked People's Exhibit No. 27 for identification?

The Court: It may be marked People's Exhibit No. 27 for identification.

Mr. McCurdy: The last photograph I have is a photograph which shows three individuals in what appears to be the interior portion of the house and appears to be a kitchen. May that be marked People's Exhibit No. 28 for identification?

The Court: It may be marked People's Exhibit No. 28 for identification.

By Mr. McCurdy:

Q. Mr. Gotch, I call your attention to People's Exhibit No. 24 for identification and ask you, do you recognize that photograph?

[fol. 761] A. I do.

Q. Was that photograph taken on the morning of July 6th of this year at 1100 Somera Road under your directions?

A. It was.

Q. What does that photograph show, sir?

A. This photograph shows the closet, F, and shows Lt. Armstrong holding the door open, which is the closet the defendant stated he had been hiding in.

Q. Is that a true photograph of the portion of the premises it shows as it existed when it was taken?

A. It is.

Q. Officer, I call your attention to the next photograph, People's Exhibit No. 25 for identification, and ask you if you recognize that photograph?

A. I do.

Q. Was that also taken under your direction?

A. It was.

Q. That was also taken on the morning of July 6th of this year at 1100 Somera Road?

A. It was.

Q. What portion of the premises does that photograph show, sir?

A. This photograph shows the dressing room—not the dressing room, it shows the hallway to the bedroom of Norma McCauley, and it shows the dresser which is desig-
[fol. 762] nated on the drawing.

Q. That is the one that is labelled three feet eight inches high, just as you go in the door?

A. That's right.

Q. There appears to be two people shown in that photograph. Do you recognize who those persons are?

A. I do.

Q. Who are they?

A. Lt. Armstrong and the defendant, John Crooker.

Q. Is that a true and correct photograph of the scene as it existed at the time the picture was taken?

A. It is.

Q. Officer, I call your attention to the next photograph, People's Exhibit No. 26.

Mr. Alexander: 27?

Mr. McCurdy: People's Exhibit No. 26 for identification,

Mr. Alexander:

Q. Do you recognize that photograph?

A. I do.

Q. Was that photograph also taken at 1100 Somera Road on the morning of Wednesday, July 6th of this year.

A. It was.

Q. Was it taken under your direction?

A. It was.

Q. What does the photograph show, sir?

A. This photograph shows Sgt. Hooper and the defend- [fol. 763] ant, John Crooker, standing in the northeast corner in front of the dresser in Norma McCauley's bedroom, and shows a corner of the chaise lounge and the dresser.

Q. Is that also a true photograph?

A. It is.

Q. Mr. Gotch, I call your attention to the next photograph, People's Exhibit No. 27, and ask you, do you recognize that photograph?

A. I do.

Q. Is that a photograph taken at 1100 Somera Road on the morning of Wednesday, July 6th of this year?

A. It was.

Q. Was that also taken at your direction on that occasion?

A. It was.

Q. What portion of the premises does that photograph show, sir?

A. This also shows the northeast corner of Norma McCauley's bedroom. It shows the defendant sitting on the end of the bed. It shows Sgt. Hooper sitting in a chair. It shows Gravante standing next to the dresser, and it shows the chaise lounge, and what appears to be blood stains in the lower corner.

Q. Does that picture, People's Exhibit No. 27, a true photograph of the condition that existed when it was [fol. 764] taken?

A. It is.

Q. Now, I call your attention to the last photograph, People's Exhibit No. 28 for identification, and ask you if you recognize that photograph?

A. I do.

Q. Was that photograph also taken on the morning of Wednesday, July 6th of this year at 1100 Somera Road?

A. It was.

Q. Was it taken at your direction?

A. Yes.

Q. What does that photograph show?

A. It shows the kitchen at 1100 Somera Road. The photograph was taken headed in an easterly direction, and shows a search being made of the kitchen cupboard for a knife, or a similar knife to the one which had been used in the murder of Norma McCauley. It shows Frank Gravante, Sgt. Hooper, the defendant Crooker, and I believe back here in the doorway is Inspector Kerr.

Q. Is photograph No. 28 also a fair and true photograph of the conditions as they were taken, sir?

A. It is.

Mr. McCurdy: Cross examine.

The Court: This might be a good time to close the morning session.

Ladies and gentlemen of the jury, do not discuss this [fol. 765] case among yourselves nor discuss the matter with anyone nor allow anyone to discuss the matter with you. Do not form or express any opinions or conclusions about the case until the matter is finally submitted to you. We will take up again at 2:00 o'clock.

(Whereupon an adjournment was had at 12:00 o'clock noon until 2:00 o'clock p.m. of the same day.)

[fol. 766] Santa Monica, California—Monday, November 28, 1955

2:00 O'Clock P. M.

The Court: The jury is present. You may continue. I believe Mr. Gotch was on the stand.

JACK GOTCH, resumed the stand and testified further as follows:

The Court: Cross examine.

Cross-examination.

By Mr. Armstrong:

Q. Now Sgt. Gotch, you testified that when the defendant was relating to you what had happened at the scene, that at one point in the narrative that he said he heard the maid in the other room.

Do you recall what he said on that subject, whether he elaborated on that at all?

A. No, we had asked him about that.

Q. Well, give us that conversation, what you said. You say you asked him about it. What was the nature of your inquiry and what did he reply?

A. Well, I asked him if he had heard the maid make any movement while he was in Norma's room, and that he said that he had, and that was about the extent of it.

Q. Did he say at what point he heard the maid make any [fol. 767] noise?

A. To the best of my recollection, it was after Norma McCauley had been stabbed and choked.

Q. I notice the sequence you gave us here was that you said that he told you that he put his hand over her mouth and pushed the knife in her several times. That she continued to make noises and move about, and that he used the clothing around her shoulders to choke her, and then he heard the maid in the other room.

Is that the sequence?

A. No. He stated to me that he had stayed in the room about an hour after this action had occurred, and to the best of my impression it was during that time that he had heard the maid. It might have been either way, the hour after her death. I presume she was dead. I don't know.

Q. Well, now, did he say, at any time prior to that, that he had heard any noise at all from the maid? Do you remember?

A. I don't believe he did. I don't recall him saying anything about it.

Q. Had you, prior to this questioning out there at the scene, had you read this alleged confession that is marked People's Exhibit 18 in evidence?

A. I had.

Q. Well, now, I wonder if it would refresh your recollection if—according to this he said: (reading)

[fol. 768] "I put the knife in my coat pocket and knelt beside her for what seemed to be a long time. She was asleep. I took her throat in my hand and she awoke and started to scream. I heard the maid, so I reached the knife in my pocket while holding my hand over her mouth."

At the time that you were questioning him on the scene, did you say anything about this, about having heard the maid earlier, as he alleged in the statement?

A. To the best of my recollection, that is what I asked him about the maid.

Q. At the time you asked him, did you point that out to him, that he had said that in his confession?

A. No, I didn't.

[fol. 769] Q. So that was the extent of the conversation, as much as you can recall on that point out at the home, is that right?

A. Yes, sir.

Q. Now, you say that he told you that he wiped blood off of the knife and his hands with a handkerchief, and he stayed about an hour and went out the kitchen door, et cetera.

Did you ask about what had happened to this handkerchief?

A. Well, yes. He stated that when he had returned to his apartment, that he had thrown his clothes all into the incinerator.

Q. His answer included, as far as you were concerned, that the handkerchief was among the clothes?

A. Yes.

Q. Did he mention that specifically, or was that your assumption?

A. He mentioned wiping his hands and the knife on the handkerchief.

Q. He didn't mention specifically the disposal of the handkerchief?

A. No. He stated he put the knife back in his pocket and also had the car keys in his pocket.

Q. I see. Then, you said that he told you in this statement that he went—that he believed he had thrown the knife [fol. 770] and keys away on his way from her place back to his car, is that right?

A. Yes. He wasn't too clear about what he had done with the knife or where he had thrown it, but he intimated he probably had thrown it, if it wasn't found in the McCauley home or in the apartment. He must have thrown it.

Q. And then did you subsequently make a search for the knife and keys, other than what you have told us about, going through the kitchen looking for a comparable knife or the knife?

A. There was another search made, yes, sir.

Q. Were you a part of that?

A. I wasn't a part of it. I asked that it be made.

Q. It was done under your direction and at your request?

A. Yes, sir.

Q. Was it done by people in your department?

A. Yes, sir.

Q. And what was the extent of that search?

A. The extent of that search was the incinerator at his apartment house.

Q. What about the road from 1100 Somera Road down to the Bel Air entrance? Was any search made along the path that the defendant was supposed to have taken?

[fol. 771] A. Yes, there was a search, but if you are familiar with that area, it is impossible to make a good search in that area.

Q. What kind of search was made?

A. Well, around the immediate area of the house, I know Gravante—I know some police officers were taken up there and a search was made around in that immediate vicinity, and nothing was found.

As far as the search down the road, a slight search was made as we were driving down, but it is impossible to locate anything in that area. I have had that experience before.

Q. The only search, then, was while you were driving down in an automobile?

A. No. Officers were taken up to 1100 Somera Road and did search. I wasn't present. I don't know.

Q. Was this done at your request and under your direction?

A. Yes, sir.

Q. What was your direction as to that search?

A. Well, I know that they took either two or four men that worked the felony car out of West Los Angeles Division, and they took them up there and told them to look in that vicinity, in the brush, alongside the road, for a knife or a set of keys.

Q. Was it your direction that they were to examine the [fol. 772] road all the way from her house, all the way down to Sunset Boulevard?

A. No, that would be an impossibility.

Q. They just searched around in that area?

A. They searched around the immediate area of 1100 Somera Road, and it was my understanding they were to search from the house down to the connecting road, which I believe was—well, I don't know the name of the road. I think it might be Chalon Road. I am not certain about the name of that street.

Q. About what distance would it be, anyway?

A. It is a matter of two blocks.

Q. Two normal city blocks, in other words? About a quarter of a mile, would you say?

A. Yes, sir, maybe a little longer.

Q. Well, in this search that was made, there and elsewhere, to your knowledge was the knife ever discovered?

A. No, sir, it was never discovered.

Q. How about the car keys? Were they ever discovered?

A. No, sir, they were never discovered.

Q. And the car keys, to your knowledge, have they ever since been discovered?

A. No, sir.

Q. As a matter of fact, in your investigation, did you not subsequently discover that John Thompson had the car [fol. 773] keys?

A. He had one set of car keys. I was told that there was more than one set.

[fol. 774] Q. On the search that was made of the incinerator in the vicinity of the defendant's home, were you present at any of that search?

A. No, sir.

Q. You didn't have anything to do with that search?

A. As far as the physical search that was made, no; I requested the search; that is all.

Q. As far as this set of keys that Mr. Thompson had, Jack Thompson had, did you see those car keys after Jack Thompson had turned them over to the police department, or did he turn them over to the police department?

A. I did see the keys—no, I don't recall whether he turned them over to us or not. However, I did see the keys.

Q. How many keys were there in this set that he turned over?

A. I don't recall.

Q. Well, I mean, was it just one or two, or was there a number?

A. No, I would say there were between, I will make a guess, I believe there were three keys.

Q. What kind of ring or chain or whatever were they on?

A. It was a key ring; the keys were on a ring, had a chain, and connected with the chain was some kind of an emblem.

[fol. 775] Q. Are you familiar with a Cadillac emblem?

A. Yes, sir.

Q. Was it one of those Cadillac emblems?

A. I think it was; I am not positive about it; I believe it was.

Q. At any rate, it was a little piece of metal that had an emblem on it?

A. I don't recall; I don't think it was metal; it was a sort of beaded emblem; I am not quite positive about it, haven't thought about it until right now. To the best of my knowledge, I think it was a sort of beaded emblem with a metallic wire holding it together.

Q. And without telling me what you found out, did you make an effort at the time you saw these keys from Mr. Thompson to ascertain from anyone else whether these were the particular set of keys that Mrs. McCauley had been using the night of her death?

A. I did.

Q. Again without telling me what you determined or what anybody else told you, from whom did you make this inquiry?

A. From Jack Thompson.

Q. Did you ask Mr. Baird about it?

A. No, sir.

Q. While you were at the scene, did you ask the—strike that out, please.

[fol. 776] May I see the exhibits here a minute? (Referring to photograph exhibits.)

When you were at the scene that is represented here in People's Exhibit Number 11 (referring to photograph), did you observe these drapes?

A. What particular time?

Q. At the time you were there with the defendant in the early morning hours of July 6th?

A. Yes, I observed the drapes.

Q. In this black and white photograph we are not able to tell what color generally are these drapes, but could you tell us what the color is?

A. It has been quite awhile, to the best of my recollection, I believe they were yellow—yellow and brown or a golden brown; I am not quite sure. There was possibly a color with it—I am not positive about the color.

Q. In People's Exhibit Number 11, in looking at the drapes there appear to be some stains on these drapes above what purports to be the body of Norma McCauley; in this picture did you observe those stains on the drapes?

A. Yes, sir.

Q. Did you determine what those stains were?

A. I thought they were blood stains.

Q. At the time that the defendant was there, did you question him about these blood stains on the curtains or on the [fol. 777] drapes, as to how they got there?

A. I don't believe I asked him anything about that.

Q. During the time the defendant was in the bedroom, which has been designated as Norma McCauley's bedroom, were you present at all times that he was being questioned there?

A. I believe I was present at all times, because I was—I was not right in his immediate presence, I was in the room,

but I was having the photographers take pictures the way I wanted to have the pictures taken.

Q. I see, to your recollection did Officer Hooper or Gravante inquire of the defendant about these blood stains on the drapes, as to how they got there?

A. They might have, I don't recall.

Q. As a matter of fact, didn't these officers or someone present from the police department ask the defendant how the blood stains got there on the drapes, and didn't the defendant reply he didn't know—does that refresh your recollection?

A. No, it does not.

[fol. 778] Q. You don't recall that question and answer having been given?

A. No, sir, I don't recall.

Q. Directing your attention to People's Exhibit No. 16, which is the other photograph before you there, portraying in that picture what appears to be two small chairs, one with arms on it and the other being a boudoir-type chair, just having a chair back, and it doesn't have any arms on the side of it; see what I am referring to there?

A. Yes, sir.

Q. There also appear to be bloodstains on that chair, which appeared at the time of your examination to be bloodstains, didn't they?

A. To the best of my recollection there were stains only on what would be this wrought iron chair. I don't believe there were any stains on that, if I recall.

Q. There were stains on the wrought iron chair, meaning the chair with the arms and supports and legs?

A. Yes, sir.

Q. Do you recall any inquiry being made of the defendant as to how the blood got over on that chair?

A. No, I don't.

Q. That is, either by yourself or any other officer?

[fol. 779] A. No, I don't recall any conversation in regard to that.

Q. Specifically you don't recall the defendant being asked how the blood got over here, and his answering, "I don't know"?

A. No.

Q. You don't recall him answering, "I don't know how the blood got over there"?

A. No, I don't.

Q. I direct your attention specifically to this chair: You said you don't recall blood being on this chair; now, I ask you if your recollection is refreshed by examining what, from the picture, is the right side of the seat, and would be the right side of the chair itself, the side of the chair as opposed to the seat, and directing your attention to a spot that appears to be on what is apparently the cushion, a couple of little spots down here near the bottom of the chair, there and there and there, and in this seat of the chair—now, I will ask you if you remember those as being the same or similar stains as you observed on the drapes and on this little wrought iron-based chair.

A. No, to the best of my recollection I don't believe there were blood stains on the chair. Like I say, I am not positive; I don't believe there were blood stains on this particular chair. I know there were on this one.

[fol. 780] Q. That is your best recollection, that there were?

A. Yes.

Q. As to People's Exhibit No. 11, it shows the bed. Do you remember whether there was a black purse on this bed on the morning that you came in there, or at any time when you examined this room did you find a black purse on this bed?

A. There was a black purse on the top of the bed when the photographs were taken. I don't know whether it was in this photograph—I believe one of the photographs had it. I really don't recall.

Q. As far as what we had in evidence, Sgt. Gotch, maybe—you are confused by this—on Defendant's Exhibit A in evidence there is an indication where the purse was supposed to be.

A. Maybe this is what I meant, I don't know.

Q. You don't recall the purse being there?

A. I don't recall. It could have been or could not have been.

Q. You said that at the scene you did recall—or your testimony on direct examination just before the noon recess was that the defendant had told you that he had taken

the keys, I understood you to say, from one purse, and that he had taken money from another purse, from a little [fol. 781] plastic purse, is that correct; is that your testimony?

A. No, what I meant is that there was a smaller plastic coin purse inside one of the purses. That is the meaning I got from his answer.

Q. Directing your attention to People's Exhibit No. 17, when you refer to a plastic purse, you are not referring to the handbag in the picture, People's Exhibit No. 17; that has a plastic top on it, is that right?

A. No, sir, I was not referring to that; a small plastic coin purse.

Q. You are referring to a small plastic coin purse. Do you see that small plastic coin purse in People's Exhibit No. 17?

A. No, I don't.

Q. Do you see in People's Exhibit No. 17 the handbag which contained the small plastic coin purse?

A. I don't know which purse it was in.

Q. The defendant at that time didn't indicate that to you, is that right?

A. No, he did not. If I recall correctly, when we were up there for the re-enactment, I don't know whether the purse was left on the dresser or not. I don't know whether we thought to ask him which one he took it out of.

[fol. 782] Q. But you definitely recall the defendant saying that he took some money out of a purse, is that correct?

A. Yes, I do.

Q. Was there any discussion on how much money that was?

A. Yes. To the best of my recollection it was somewhere in the neighborhood of $28.00, or some such amount.

Q. Do you remember any further discussion as to what type of money it was, whether it was in tens, or ones, or a twenty, or whatever?

A. No, I don't.

Q. At the time that you were out at the defendant's residence you had taken into possession some of his money, had you not?

A. At whose residence?

Q. At the defendant's residence, or some place where you

were questioning the defendant, you had taken some money from his person into your possession as evidence, had you not?

A. No, his money was taken at the time he was booked, shortly after midnight on the 6th.

[fol. 783] Q. How much money was taken from his person, do you recall?

A. I don't recall right off hand. I will make a guess; I believe it was right around $80.00, I am not sure; but it is a matter of record. I could look it up, if you want to know the exact amount.

Q. Anyway, your recollection is it was approximately $80.00?

A. I believe so; I am not quite sure, but I believe it was; it may have been a little more and may have been a little less, but I believe it was $80.00 or over.

Q. Did you say that the defendant had described the knife to you as being a steak knife?

A. He said it was similar to a steak knife.

Q. Do you recall any further discussion on that point as to—by way of recollection—steak knives usually come in a set of four or six or eight. Was there any inquiry made as to where the remainder of the set of steak knives were?

A. No. We took him into the kitchen and attempted to find the remainder of a set of steak knives in the kitchen, and we just found the usual assortment of knives that are usually found in a kitchen, at 1100 Somera Road.

Q. And as far as this assortment of knives in the kitchen were concerned, did you at that time or later make any detailed examination of any of these knives to see if they had perhaps been used and washed and replaced?

[fol. 784] A. Yes, sir.

Q. And was that investigation made under your direction and supervision?

A. Yes, sir.

Q. With what results?

A. Well, there were no results with the knives that we had tested.

Q. That is, the knives you had tested didn't have any evidence of blood on them?

A. No.

Q. Is that correct?

A. That is correct.

Q. And from your experience as a police officer, Sgt. Gotch, can you tell us generally—not in this case, but in a given case—if it is possible to determine the presence of blood on a knife that has had blood on it and has been subsequently washed?

Mr. Alexander: That is immaterial, if the Court please.

The Court: Objection sustained.

By Mr. Armstrong:

Q. Now in going back to your narrative again, I believe you said that you and the defendant were in the kitchen and you attempted to have him point out the knife or a knife similar to the one he used, and that while you and the defendant were in the kitchen, other officers were waiting elsewhere, is that correct?

[fol. 785] A. Well, no. That was the last point we went to, was in the kitchen, to the best of recollection, and there were other officers present, and just immediately before we left I believe I was in the kitchen alone with the defendant.

Q. Then the other officers came in?

A. No, the other officers were waiting outside. I went outside with the defendant.

Q. Perhaps I misunderstood you on direct examination. You said that he—as I recall your direct examination, you said that you—that the defendant told you that he had gone—while he was in the bedroom—he told you he had gone out the kitchen door and through the garage and walked back to his car, and had thrown the knife and keys away. Then you told us you took the defendant to the kitchen to have him point out the knife similar to the one he used, and you and the defendant were alone.

Would you tell me what happened from that point on? Tell me what happened from the time you left the bedroom. I am talking about the early morning hours of July 6th when you were out at 1100 Somera Road with the defendant.

A. We left the bedroom of Norma McCauley, and the defendant showed us how he made an exit.

Q. All right.

A. All during the questioning he was very vague as to [fol. 786] what had actually happened with the knife or with the keys, and we were particularly interested in the knife.

We asked him if it had been possible that he had washed it in the kitchen and put it back in a drawer, or something of that order, and he said he didn't know actually what he had done with it. As a result of that answer, we did make a search of the kitchen drawers and any possible place where a knife could be.

Q. When you say "we", to whom do you refer?

A. Well, Gravante was there —

Q. (Interrupting) I am talking about in the kitchen now.

A. Well, Gravante was there part of the time. Hooper was there part of the time. In fact, we all may have been in the kitchen at one time or another when the defendant was there.

Q. The part of your testimony on direct that I was inquiring particularly about was when were you and the defendant in the kitchen alone?

A. Just prior to leaving the place.

Q. And the other officers —

A. (Interrupting) The other officers had gone outside, waiting for me to come out.

Q. I see. I believe that is all. Thank you.

[fol. 787] Re-Direct Examination.

By Mr. McCurdy:

Q. Officer Gotch, you testified on cross examination that it was impossible to locate anything in that area. Will you please explain to us why that would be impossible?

A. Well, it is a canyon area. There is a great deal of brush, underbrush, and undeveloped property, and the only way you could possibly find anything in that area would be just by luck.

Mr. McCurdy: No further questions.

Mr. Armstrong: I might ask one additional question on cross examination.

The Court: You may.

Cross-examination (Continued).

By Mr. Armstrong:

Q. Officer, do you remember any conversation with the defendant about whether he had used the wash basin or any of the bathroom facilities there in the bathroom adjoining Norma's bedroom?

A. He said that when he and Norma had the first conversation, and that she fell asleep on the chaise lounge, that he got up and went to the bathroom. I don't know whether he used the bathroom, what he did in there, but he said he had gone to the bathroom.

Q. Then directing your attention to the point in the [fol. 788] narrative where he said that he had stabbed her, and after this was over with did he say he went into this bathroom afterwards and washed his hands or cleaned up, in any way?

A. We could have asked him about that, but I don't recall. [fol. 789] Q. You don't recall specifically asking him that, and you don't, I take it, recall an answer that he made, either?

A. No, I don't.

Mr. Armstrong: Thank you. Nothing further from this witness.

Offers in Evidence

Mr. McCurdy: Nothing further at this witness. At this time the People offer in evidence Exhibit No. 19, consisting of a photograph.

Mr. Armstrong: Which one is that?

Mr. McCurdy: That is a photograph of the Detective Bureau at West Los Angeles.

The Court: That will be marked People's No. 19 in evidence.

Mr. Armstrong: May we include in this stipulation that the persons portrayed in the photograph do not purport to portray anyone connected with this case, that they are simply to show the size?

Mr. Alexander: Well, Gravante's picture is here. However, we will stipulate that the persons present are not important at all, just to show the relationship of the desk to the doors, and that is all.

Mr. Armstrong: Yes.

The Court: Very well, it will be so understood.

Mr. McCurdy: The People offer in evidence the exhibit next in order, No. 20. That is also of the Detective Bureau. [fol. 790] Mr. Armstrong: That is the Commander's desk?

Mr. Alexander: That is correct.

Mr. Armstrong: Yes, no objection.

The Court: That will be marked People's 20 in evidence.

Mr. McCurdy: The People offer in evidence Exhibit No. 21 for identification.

Mr. Alexander: That is another picture of the Commander's room.

Mr. Armstrong: No objection.

The Court: That will be marked People's 21 in evidence.

Mr. McCurdy: The People offer in evidence Exhibit No. 23. That is a map—a portion of the West Los Angeles station.

Mr. Armstrong: Yes. Your Honor, we have used this a good deal, and I would request the court to withhold a ruling on the admissibility of this until I can make a physical inspection to check this, and I will assure the court I will do that this afternoon, and if the Court will withhold it until tomorrow morning—I can't say at this point whether that is objectionable or not.

The Court: I will receive it in evidence at this time. If you have any valid objection afterwards, we will reconsider and strike it on your motion.

[fol. 791] Mr. Armstrong: As I understand these exhibits anyway, they are received subject to correction, so possibly we can correct something about it if it comes up.

The Court: It will be marked People's 23 in evidence.

Mr. McCurdy: The People offer in evidence People's Exhibit 24 for identification.

Mr. Armstrong: No objection.

The Court: That will be marked People's 24 in evidence.

Mr. McCurdy: The People offer in evidence No. 25.

Mr. Armstrong: Your Honor, as to these exhibits, I have no objection to the exhibits as such. I do have an objection, that I take it the Court considers a continuing objection, to the line incident to which these exhibits were received, and

for that purpose only I make an objection to these exhibits as being a portion of a line of questioning to which I have, I assume, a continuing objection.

The Court: I believe the record so indicates. The objection is overruled. That will be marked People's 25 in evidence.

Mr. McCurdy: The People offer in evidence the next exhibit, No. 26 for identification.

The Court: People's 26 in evidence.

[fol. 792] Mr. McCurdy: The People offer in evidence 27 for identification.

The Court: People's 27 in evidence.

Mr. McCurdy: The People offer in evidence Exhibit No. 28.

The Court: People's 28 in evidence.

Mr. McCurdy: The People would like to exhibit these exhibits consisting of 18 through 28 to the jury at this time.

The Court: You may do so.

(Mr. McCurdy hands exhibits to the jurors and jurors examine.)

The Court: For the benefit of those who have never served on a jury before, let me explain that during the course of your deliberations of course you will have the exhibits with you in the jury room.

Mr. Alexander: Your Honor, while the jury is looking at those exhibits, might it be a good time to approach the bench for just a moment, please?

The Court: You may. Do you want the reporter?

Mr. Alexander: No.

(Whereupon an off-the-record discussion was had.)

[fol. 793] The Court: The jury have apparently examined all the exhibits; you may proceed with your next witness.

Mr. McCurdy: The People request permission of the Court to recall Officer Gotch. Probably this will be for proper redirect examination, if the Court please.

The Court: You may.

JACK GOTCH, resumed the stand, having previously been duly sworn, was examined and testified further as follows:

Re-Direct Examination (Continued).

By Mr. McCurdy:

Q. Officer Gotch, since your testimony here before, have you refreshed your memory as to the amount of money the defendant had in his possession at the time of booking?

A. I did.

Q. How much money did the defendant have on that occasion?

A. $78.00.

Q. And do you recall the denominations?

A. If I may refer to my report, I can give you the denominations.

Q. If I show you here a paper labeled "Found Evidence", is that a duplicate copy of the one you have?

A. Yes, sir.

Q. Is that a paper that was prepared by you, or under [fol. 794] your direction, showing the amount of money the defendant had at the time of booking?

A. It is.

Q. Will you refer to that and tell us the denomination of the bills that the defendant had; and you don't need to give the serial numbers.

A. The defendant had one $10.00 bill, one $20.00 bill; he had one $10.00 bill and two $20.00 bills in a check case which was in his inside coat pocket. Loose in his pocket were eight $1.00 bills; two $5.00 bills, and one $10.00 bill.

Mr. McCurdy: Cross examine.

Mr. Armstrong: No questions.

(Witness leaves stand.)

The Court: Your next witness.

Mr. McCurdy: Lois Johnson, please.

Lois R. Johnson, called as a witness by and on behalf of the People, after being duly sworn, was examined and testified as follows:

The Clerk: Be seated and state your name, please.
The Witness: Lois R. Johnson.

Direct Examination.

By Mr. Alexander:

Q. I will sit further back here, and maybe if you talk [fol. 795] directly to me, Mrs. Johnson, in that way all the jurors will be able to hear you, is that right?

A. Yes.

Q. Is that Miss or Mrs. Johnson?

A. Mrs. Johnson.

Q. What is your occupation?

A. I am legal statement reporter for the district attorney.

Q. Was that your occupation on the 6th of July of 1955?

A. Yes, sir.

Q. On that day were you in the office of the district attorney, S. Ernest Roll?

A. Yes, sir.

Q. Directing your attention to the defendant, John Russell Crooker, Jr., was he there?

A. Yes, sir.

Q. What kind of machine do you operate?

A. Stenograph.

Q. And did you take a stenographic statement of what occurred in that office on that day?

A. Yes, sir.

Q. Were the statements made by the defendant free and voluntary?

A. Yes, they were, sir.

Q. Was any force or duress used on him by anyone?

[fol. 796] A. No, sir.

Q. Was any promise of reward or hope of immunity extended to him?

A. No, sir.

Q. After taking down on your stenographic machine the questions and answers, did you then transcribe those questions and answers?

A. Yes, I did.

Q. And you have a typewritten copy of that with you?

A. Yes, sir.

Q. Did you compare the typewritten copy with your original stenographic notes?

A. Yes, sir.

Q. Is the copy before you a true and accurate transcription of the notes you took in Mr. Roll's office on July 6th, 1955?

A. Yes, sir.

Q. In order to give the conversation exactly, is it necessary for you to refer to the transcribed copy of your notes?

A. For me to read it?

Q. Yes.

A. Yes.

Q. To give the conversation exactly, you would have to use that as a memorandum, would you not?

A. Oh, yes.

[fol. 797] Mr. Alexander: May we mark her memorandum, if the Court please, as People's Exhibit for identification next in order?

The Court: People's Exhibit 29 for identification.

Mr. Armstrong: May I see that just a moment, please?

Mr. Alexander: Yes.

(Mr. Armstrong examines transcript.)

Mr. Armstrong: Your Honor, before there is any reading of this statement I would like to ask a couple of questions on voir dire, if I may.

The Court: Well it has not been offered in evidence at this point.

Mr. Alexander: We will not offer that memorandum in evidence, if the Court please; just as an exhibit.

The Court: I didn't understand.

Mr. Alexander: I do not intend to offer People's Exhibit Number 29 in evidence. We, the People, will offer that only as an exhibit—it is being used now as a memorandum, solely to refresh the witness's memory. But if counsel wishes to offer it in evidence, it is all right with us, but we cannot.

The Court: Have you finished with your foundational questions?

Mr. Alexander: I was going to ask one or two questions.

The Court: You may continue.

By Mr. Alexander:

Q. Mrs. Johnson, sometime during the statement taking, [fol. 798] sometime during the taking of the statement, the proceedings were interrupted for the purpose of a telephone call, is that correct?

A. Yes, sir.

Q. You have not recorded the conversation that you heard on that telephone call, have you?

A. No, I have not.

Q. When you read your statement and you come to that portion at which it was interrupted, would you be good enough to indicate to us, please, the point the statement was interrupted for the purpose of a telephone call?

A. Yes, I will.

Mr. Alexander: Now, very well; counsel may ask on voir dire, if he cares to.

Voir dire examination.

By Mr. Armstrong:

Q. Mrs. Johnson, what is your position there in the office?

A. Legal statement reporter.

[fol. 799] Q. Legal Statement Reporter?

A. Yes.

Q. Do you work in this office all the time or do you just come in there for the purpose of taking this statement?

A. No, I work there all the time.

Q. Do your notes which you have before you reflect everything that was said by everybody in the room?

A. Yes.

Q. During the time you were there, except for the telephone conversation?

A. Yes, yes.

Q. Did you make any indication in your notes that you were going off the record for a telephone conversation?

A. No.

Q. You just know where that was?

A. Yes—in my notes I know; I mean, I have an indication there; I mean just a pencil note.

Q. Will you show me that?

A. Not in my transcription, no; we are not allowed to do that.

Q. These are the notes, I take it, indicating stenotype machine notes that the witness has before us, upon which this typewritten information is based?

[fol. 800] A. That's right.

Q. Were you the person who put through the telephone call at the time of this interruption?

A. No, sir.

Q. Well, I wonder—I glanced through this, your Honor——

If you would indicate to me from your recollection where the place was where the interruption was made for the telephone call?

A. I will in just a minute (referring to transcript). I think there is a red pencil mark here, wait a minute——

The Court: At what page and line?

The Witness: Page 9 between Lines 7 and 8.

Mr. Armstrong: All right.

Q. Were you present in the room at the time the telephone conversation was going on?

A. Yes, I was.

Q. At whose direction did you not take down the telephone conversation; or what words were said at your end of the conversation?

A. I don't understand.

Q. You were taking notes of everything said by every person who was in the room?

A. Yes.

Q. When the telephone conversation was made, and you were hearing one-half of the conversation. If you continued [fol. 801] to take down every word that was said you would take down those words as you heard them?

A. No, sir, we are instructed not to take down any telephone conversation that happens during any statement that we take.

Q. No one said anything about "Don't take down this because it is a telephone call"?

A. No, I just automatically go off the record when a telephone call is put through.

Mr. Armstrong: I have nothing further on voir dire at this moment from this witness.

The Court: All right, your next question.

Direct Examination (Continued).

By Mr. Alexander:

Q. All right, Mrs. Johnson, using your notes to refresh your recollection, would you be good enough, please, to tell us what was said by Mr. Roll and by Crooker and anyone else in that room at that time?

A. Begin reading?

Q. Yes.

A. "By Mr. Roll: Crooker, how do you spell ——"

Do you want me to say "Question" and "Answer"?

The Court: We will take the afternoon recess at this time; this would be a good time to dispose of this matter.

[fols. 802-803] Ladies and gentlemen of the jury, do not discuss this case among yourselves nor allow anyone to talk to you about it. Do not form or express any opinions or conclusions until the matter is finally submitted to you. We will take a ten-minute recess.

(Jury retires to jury room.)

Mr. Armstrong: Your Honor, may we approach the bench?

The Court: Yes.

Colloquy Between Court and Counsel.

(The following proceedings were had at the bench during recess while the jury were in the jury room:)

Mr. Armstrong: Your Honor, my purpose is that any statements regarding the offense were made after Page 9, if the Court will observe. In other words, after the place where the witness indicated she was interrupted by a telephone call. Now, because of the nature of the inquiry that was made by the witness, Simpson, before we get into that, I want to call as a voir dire witness someone from the District Attorney's office—I assume Mr. Alexander, to ascertain

more about this. In other words, we have had things referred to in examination but we haven't had them in evidence. I particularly want this court to be aware of whether or not there was a wire recording made, since I assumed from the previous question, the notes which Mr. Alexander had here, they are stenographic notes. Now I [fol. 804] find they are not on a wire recorder and I think it would be material in the Court's ruling as to the admissibility on statements made subsequently, to go back into this telephone conversation between Mr. Roll and Mr. Simpson and Mr. Crooker because I think, independent of the Court's ruling on the other items that have already been passed on, that this presents a new field of inquiry. And I certainly don't plan any extensive voir dire at all on those matters. It will be a matter of calling one witness. I just wanted the Court to know what my intended procedure was here so that I won't be unseemingly interrupting the witness' otherwise even flow of testimony. In other words, up to Page 8 I had no objection. You see, that is my problem.

The Court: I believe that you should present all your voir dire evidence at this time. Before we start any presentation of this statement, I will consider whether this statement does not present a somewhat different factual situation than does the statement made in the police station. For that reason I will read this statement myself first.

Mr. Armstrong: All right.

(Afternoon recess.)

[fol. 805] (The following proceedings were had out of the presence of the jury:)

The Court: Let the record show that these proceedings are outside of the presence of the jury. As I understand it, the defendant has indicated a desire to proceed —take testimony on voir dire examination. If the Court understands these facts correctly, I don't believe any voir dire examination will be necessary. If there are, however, any of these elements which are in doubt, or subject to some question, then we will take testimony on these facts.

As the Court understands the situation in connection with People's Exhibit 29 for identification, first it was unquestioned that the defendant asked, in the presence of the

district attorney and others in the room, for an attorney. Second, that a call was put through to the attorney of the defendant's choice. Third, the defendant was given no private opportunity to talk to counsel. Fourth, on the contrary, the district attorney and police officers were present during all of the telephone conversation, and fifth, on at least one occasion the district attorney personally interrupted the conversation on an extension phone and spoke to the attorney.

Now, if there is any question about any of those being established facts, then the Court will take testimony on those elements, but if those elements are uncontroverted, then to the Court only one conclusion follows.

[fol. 806] Mr. Alexander: The Court is correct, as far as it has gone. However, there is one element that I think is of importance. The defendant was in the private office of the district attorney. He asked that a phone call be put into an attorney, which was done. At no time did this defendant indicate to anyone that he desired to have a private conversation with any attorney. He just asked that that attorney be called.

That Mr. Roll did so at his request. We contend, if the Court please, that at that point—well, your Honor is interested in the facts. We cannot contradict the Court's facts, but wish to add that at no time did the defendant indicate he desired any private conference with his attorney.

Mr. Armstrong: Your Honor, in addition to this fact that has been brought out by the district attorney, I think it is significant to note that in the questioning of Mr. Alexander on Page 599 of the daily transcript of this case, a question of Mr. Alexander's, I think, gave the key to how private or what lack of privacy there was in this conversation where Mr. Alexander's questions to Mr. Simpson show pretty clearly to us, by a matter of inference, I think, that a recording of this conversation of some type was made.

[fol. 807] Mr. Alexander's question, particularly (reading):

"Q. Let me ask you, Mr. Simpson, whether at the time Mr. Roll called you this wasn't the conversation:

" 'Mr. Roll: Simpson?'

"And you said, 'Yes.'

"And Mr. Roll said, 'This is Ernie Roll.'

"And you said, 'Yes, Mr. Roll, how are you?'

"And Mr. Roll said, 'Pretty good,' and so on, which, as I say, are merely indicative to us, while there is no evidence of the recording in the record of this, I think it is indicative to us from the precise phraseology of the question that in fact the conversation was recorded, and it is my charge against the District Attorney, and what I plan to ask on a voir dire inquiry, to ask of Mr. Alexander the direct question of whether or not a wire recording wasn't made of this entire conversation. It is my belief that it was.

Mr. Alexander: I can indicate to the Court exactly how it was done, if your Honor wishes me to do so under oath. I will be glad to do that.

The Court: You may state at this time, if you wish.

Mr. Alexander: Yes. If your Honor will visualize the ordinary French-type telephone, one end—on one end of that we have the receiving end, which is applied to the ear; [fol. 808] the other end is a transmitter into which we speak. Now, the telephone company has standard equipment, and this is standard equipment in Mr. Roll's office, which was used at that time.

That telephone, however, by pushing a button, Mr. Roll can have a conversation with someone at the other end without lifting that receiver. There apparently is a small microphone in the instrument itself, apart from the receiving instrument. That attached to the telephone is a small loud speaker, which is on his desk, so the voice of whoever is talking to him may be heard right at his desk by anyone in that room without lifting that receiver.

Now, when Mr. Roll started to talk to Mr. Simpson, that receiver was on, and we heard the conversation between Mr. Roll and Mr. Simpson. Then we heard Mr. Roll say to the defendant to get the extension which was nearby, probably fifteen or twenty feet away, and the defendant went to that extension, so we were able to hear what the defendant said. There was just one thing that Mr. Simpson said that we heard, and that was, I believe, something to the effect, "How are you," or words to that effect.

At that time Mr. Roll flipped the button on the telephone so that now converted that phone into the ordinary phone,

so that Crooker, the defendant, talked to Mr. Simpson, [fol. 809] and we could hear what Crooker said, being in the same room, but what Simpson said to him, after the words "How are you," or words to that effect, we heard nothing.

Now, when Crooker got on that extension and then accused Mr. Roll of going to use violence on him, that was the time Mr. Roll picked up his instrument and told Mr. Simpson no such thing has occurred, nor will it occur. At that point it is true Mr. Roll interrupted the conversation to advise Simpson that nothing like that will happen, and invited Mr. Simpson to come in.

Now, that is the operation of that telephone, and that is the recording counsel speaks of.

The Court: Do you believe it is proper for a District Attorney or any law enforcement officer to interrupt the conversation between a defendant and an attorney?

Mr. Alexander: Maybe it wasn't entirely proper, your Honor, but had your Honor been in Mr. Roll's position and then being publicly accused of going to use violence on this defendant, where no such thing possibly could have occurred, there, your Honor, and I say that in all fairness and in all honesty, that no one had intended it, I can see Mr. Roll's reaction to listening to that type of conversation and interrupting at that point.

The Court: Well, it was public only because your office [fol. 810] didn't provide a private opportunity for conversation.

Mr. Alexander: He did not ask for a private conversation, if the Court please, and at that point the defendant was charged with murder. He was in custody. Someone had to be with him at all times until he is placed back in the jail. In the jail he has all the opportunity in the world to speak with his counsel privately, but here he was using Mr. Roll's private facilities. Mr. Roll, as a courtesy to him, called this lawyer—possibly it was legal he should do so. Maybe it goes beyond courtesy, but Mr. Roll permitted him to use his own facilities in his own private office.

I don't think he merits condemnation for that, if the Court please.

The Court: Anything further?

Mr. Armstrong: Well, your Honor, it is just that—I have just spoken to the defendant as to whether there was some sort of a public address system and he could hear all the conversation, and the defendant has informed me—this is not a matter of record, of course, until it is so testified to—that that wasn't so. It wasn't made public, as Mr. Alexander said, just the introductory remark "Hello." I would call the Court's attention to Pages 604 and 605 of the preliminary transcript where they go on to say—they go on to relate the [fol. 811] entire conversation between Mr. Roll and Mr. Simpson:

"And Mr. Roll said, 'Pretty good. I am sitting here with a young man that has been placed under arrest in connection with a murder up in Bel Air, John Russell Crooker. I think that is the way he pronounces it.'

"And you said, 'Oh, yeah, a former student of mine.'

"Did you have that conversation with Mr. Roll up to that point at that time?' "

And then Mr. Roll said, "What?"

And you said, "He was a former student of mine," and then Mr. Roll said, " 'Yes. He has asked me—we tried to take his statement. He said he wanted to talk to you. I asked him if you'd represent him. He said that he would like to talk to you in connection with that matter.'

"And you said, 'Yes.'

"And Roll said, 'And he's here and if you want to talk to him, why, I'll put him on the phone and you can talk with him.'

"And you said, 'Thank you kindly.' "

Mr. Armstrong: There was much more than just an opening remark, as Mr. Alexander would indicate, and I would say this is indicated by virtue of the questioning, and I would further like to point out for the Court's attention my [fol. 812] own personal observation, that the notes from which Mr. Alexander was questioning Mr. Simpson had the caption in typewritten letters, "Wire Recording, Crooker," and that is what he was holding in front of him at the time he was asking the questions of Mr. Simpson, so I dispute the statement that this was some sort of a little microphone button in the instrument itself, and it is significant further than when Mr. Alexander turned over this particular document to the press, that he tore off the top of that that said, "Crooker Wire Recording"——

Mr. Alexander: (Interrupting) I can tell you further that every minute of the time that Crooker was in our office, a wire recording of everything he said was made, which we intend to play before this jury, with the Court's permission.

Now, that recorder does record the telephone conversation had, but does not regord any reply made by Mr. Simpson, other than that first opening remark when Mr. Roll flipped the switch down, and the reason the recorder does not have that is because the recorder was recording from the little loud speaker that was on Mr. Roll's desk.

I told your Honor that when Crooker got on that extension phone and Simpson made that opening remark, it was at that point the button was flipped, and from that point [fol. 813] on we could not hear what Mr. Simpson said to the defendant Crooker. That was my statement to the Court.

[fol. 814] The Court: Well, these matters are merely refinements. It seems to the Court rather elementary that the defendant requested an opportunity to have legal advice before he proceeded with this questioning after a few preliminary questions giving his name and other trivial details.

To require a defendant to receive legal advice in the presence of others is the equivalent of no legal advice.

Now the Court has always had high regard for the ethical standards of the office of the district attorney. However, the conduct of the district attorney, in listening to the defendant's conversation with an attorney, interrupting the conversation on an extension phone is highly improper for a law enforcement officer who is a member of the bar.

This Court cannot put its stamp of approval on this conduct by admitting the subsequent proceedings into evidence. Therefore, an objection to any further testimony regarding People's Exhibit 29 is sustained.

Mr. Armstrong: Thank you, your Honor.

Mr. Alexander: May we withdraw 29, if the Court please?

Mr. Armstrong: So stipulated.

The Court: It may be withdrawn.

Mr. Armstrong: I have no further questions of this witness.

[fol. 815] Mr. Alexander: Does that, if the Court please, also exclude everything that occurred in Mr. Roll's office prior to the time he asked that Mr. Roll call his lawyer or a lawyer?

The Court: The Court sees no objection to any matters that took place prior to the request for counsel.

Mr. Alexander: That is up to page 9, if the Court please, between line 7.

The Court: If that is the place, that is correct.

Mr. Alexander: Then I think we will have to recall the young lady.

Mr. Armstrong: In which case, your Honor, I would request, for the purpose of our reference, so that we can be sure where we are, People's Exhibit 29, is that in the record for identification, so that we can ascertain with precision the nature of the inquiry as to whether it pertains to a portion before or after the place that I assume will be marked by this witness. It will be necessary for her to make an indication for us in the record, and, therefore, we should really have the exhibit before us to see what comes before and what comes after.

The Court: Very well; People's Exhibit Number 29 will be marked for identification only.

[fol. 816] Lois R. Johnson, having previously been duly sworn, resumed the stand and testified further as follows:

The Court: All right, you may bring the jury back, Mr. Bailiff.

(Jury returns and proceedings resumed in open court before jury.)

The Court: Let the record show the jury is now in the box. You may proceed.

Mr. Armstrong: If I may have just a moment again to look at this—well, Mr. Alexander, if you will ask your next question, I would like to look at this just a moment after the witness answers.

Direct Examination (Continued).

By Mr. Alexander:

Q. I am going to ask you, Mrs. Johnson, to read the questions and answers up to that point where a telephone call was put in. Please read up to that point, and when you

come to that point will you indicate to the Court that you have arrived at that point?

Mr. Armstrong: If we may have that point marked.

The Witness: It is marked.

Mr. Armstrong: Now may I examine it just a moment, please? I will just taken a second (examining statement). All right.

[fol. 817] By Mr. Alexander:

Q. I will sit back here, and if you drop your voice, I will remind you to speak up again.

A. Thank you.

"By Mr. Roll:

"Q. Crooker, how do you spell it?

"A. C-r-o-o-k-e-r.

"Let the record, just go around the room, everyone present, go ahead. You probably don't know everyone. Go ahead. Grover Armstrong, Los Angeles Police Department, J. H. Hooper, William Stambler, West Los Angeles detectives; A. Alexander; Marcus Crahan.

"By Mr. Roll:

"Q. Crooker, how do you spell it?

"A. C-r-o-o-k-e-r.

"Q. Full name is John Russell?

"A. Right.

"Q. And Junior on it?

"A. Right.

"Q. And Mr. Crooker, how old are you?

"A. Thirty-one.

"Q. And where were you born?

"A. Bucksport, Maine.

"Q. What part of Maine is that?

"A. Just down from Bangor about 135 miles from Portland.

[fol. 818] "Q. Are you married, widowed, single or divorced?

"A. Married.

"Q. What's your wife's name?

"A. Marion Frances.

"Q. Marion Frances?
"A. Right.
"Q. What was her name before?
"A. Woolridge, W-o-o-l-r-i-d-g-e.
"Q. How long have you been married?
"A. Since 1949.
"Q. Where were you married?
"A. Santa Ana.
"Q. Santa Ana down in Orange County, California?
"A. Yes.
"Q. Is that your only marriage?
"A. No.
"Q. Been married before?
"A. Yes.
"Q. Where?
"A. In Los Angeles.
"Q. To whom?
"A. Evelyn C. Bracken was her former married name.
"Q. And what happened to that marriage?
[fol. 819] "A. It was, an interlocutory was granted, she was the plaintiff and then subsequent annulment.
"Q. When did that happen?
"A. Frankly, I can't give you the date of that.
"Q. The year, do you remember?
"A. No, I don't, probably 1949 because it was just
"Q. Any children as a result of the Bracken marriage?
"A. No.
"Q. How many children as a result of your present marriage?
"A. Two.
"Q. Their ages?
"A. Pardon?
"Q. Their ages?
"A. Five and three.
"Q. Mrs. Norma McCauley, how long have you known her?
"A. About two years.
"Q. Just tell us the circumstances about how you went to work there and if you didn't go to work there, what occurred?
"A. When I graduated from college I wanted to go to law school, the possibility of living with families out in

[fol. 820] the area of U.C.L.A. was explained to me, I got some recommendations from U.C.L.A., I retract that word 'recommendations', some referrals and also some public advertisement, I think the McCauleys were from U.C.L.A., and contacted them to live there in their home and do just incidental home functions, everything ranging from bartending to baby sitting.

"Q. When, about, did you go to work there?

"A. In July of 1953.

"Q. That was during the summer session, was it?

"A. (Nods head affirmatively.)

"Q. And how long did you remain actually working there?

"A. Well, I eventually moved to the Thompson's residence.

"Q. About when was that that you moved to the Thompson residence?

"A. It was after the separation of the McCauleys.

"Q. About what month and year, if you remember?

"A. No, I'm sorry, but I can't give you a date, you'll have to get it from them because Mrs. McCauley had a friend come there and live with her after the separation for a short interim and I just don't know exactly when I did move.

[fol. 821] "Q. What year was it?

"A. Well, it was, it would be 1953.

"Q. And the Thompsons are who?

"A. Mrs. McCauley's parents.

"Q. They also reside in Bel Air?

"A. Yes.

"Q. What is the address in Bel Air?

"A. 773 Stradella.

"Q. And where did the McCauley's live?

"A. 1100 Somera Road.

"Q. When you were working for the McCauley's, did you get compensation for working for them?

"A. Yes.

"Q. You were paid?

"A. Yes.

"Q. Did you get your meals there?

"A. Yes.

"Q. Room furnished?

"A. Yes.

"Q. What was the compensation?

"A. Well, I don't know the exact amount.

"Q. Well, roughly, was it by the month or what?

"A. It was somewhere between thirty and forty dollars, it was a very informal stipend in the method of payment, in time of payment, in amount. It was not something that [fol. 822] either I or the McCauley's put emphasis on since my objective was to have the board and room to go to school.

"Q. When, before the other night, was the last time that you saw Mrs. McCauley?

"A. I can't give a date for that.

"Q. Well, giving you the date today, the 6th, July 6th, as being Wednesday, I'll ask you this question and I'll go back to the other one when did you see Mrs. McCauley alive?

"A. (No answer.)

"Q. When did you last see her?

"A. I saw her Tuesday, no, wait a minute, Monday.

"Q. Monday of this week?

"A. Uh huh. (Affirmative.)

"Q. And where did you see her?

"A. Well, at her home.

"Q. And what address again?

"A. 1100 Somera Road.

"Q. About what time did you go there?

"A. I was there twice.

"Q. When was the first time?

"A. It was early afternoon.

"Q. Did you see her on that occasion?

"A. No, no, I didn't see her.

[fol. 823] "Q. Was anyone home on that occasion?

"A. Well, yes, the car was in the garage and the children were playing up the street.

"Q. Did you stop at the house?

"A. No.

"Q. Were you in an automobile or on foot?

"A. In my car.

"Q. What kind of a car?

"A. '51 Plymouth.

"Q. Color.

"A. Blue.

"Q. Remember the plates, the license plates?

"A. You mean what were the numbers?

"Q. Yeah.

"A. I don't know.

"Q. California plates?

"A. Yes.

"Q. And about what time would you say in the afternoon on last Tuesday was this?

"A. Well, I left the house about 2:30, 3:00 o'clock. It takes approximately half, three-quarters of an hour to drive up there, I should say about 4:00 o'clock.

"Q. Did you make any stop at all or just go by the house?

"A. Just went by.

"Q. You say you observed her car around the house?

[fol. 824] "A. Um-hmm (affirmative).

"Q. What kind of a car was her automobile?

"A. Blue Packard, excuse me, Cadillac.

"Q. Where was it?

"A. In the garage.

"Q. Was it the type of garage where the garage door was open where you could see or——?

"A. Yes, open.

"Q. Did anyone, to your knowledge, see you up there around the household? Children or the maid or anything?

"A. Not to my knowledge.

"Q. All right, now, about what time did you return?

"A. Well, it was about 6:00 o'clock or 6:30, something like that.

"Q. Same evening or in the morning?

"A. Same day.

"Q. Still daylight?

"A. Yes.

"Q. All right, tell us what happened when you returned there?

"A. Well, I went around to the back of the house and went in the back door of the children's room and waited for Mrs. McCauley to come home.

[fol. 825] "Q. Did the children see you or not?

"A. No.

"Q. How did you effect entrance into the house?

"A. Through the door.

"Q. Was the door opened?

"A. Wasn't opened.

"Q. Well, did you have a key to get in or was it unlocked?

"A. I didn't have a key, no, I don't have a key.

"Q. Beg pardon?

"A. I don't have a key.

"Q. I take it, then, the door was unlocked. You tried it and went in?

"A. It was unlocked. May I interrupt you just for a moment?

"Q. Surely.

"A. I'm sure that everyone here is aware of it, I just want for the record to say it, I have asked for counsel."

The Court: Just a moment, is that the point that we discussed previously?

The Witness: Where the telephone conversation is?

The Court: Yes.

The Witness: No.

[fol. 826] The Court: Be sure you do not read past the telephone conversation.

"Q. Do you have a lawyer?

"A. No, I don't. Nor do I have the wherewithal to pay for an attorney.

"Q. Well, it's your privilege to have counsel of your own choosing. If you don't have money enough to hire counsel, well, the court will, at the proper time, appoint a public defender for you.

"A. So, I am to understand that all of the procedure in the past and now is that I have made every objection that I can make to it.

"Q. Well, let me ask you this with reference to any statements we take here, I want you to understand that having been a law student I think you know your rights, generally, don't you?

"A. Well, I don't want to hold myself out as an attorney because I certainly am not.

"Q. What you told me here so far has been free and voluntary on your part, isn't that right?

"A. Well, as I said when I was first acquainted that I was under suspicion, I would prefer to have counsel. I feel that it is wrong for a private citizen to go through this without counsel and without counsel at the earliest possible opportunity.

[fol. 827] "Q. Well, if you have a desire to have counsel and you can hire one I'll turn you right over to the phone book right now. You can phone any counsel that you want to and ask him to come up here. If you have engaged counsel he is perfectly entitled to be here at all stages, I want you to know that in any questioning here.

"A. Well, is it possible for me to call, make calls in the attempt to get counsel?

"Q. Well, I'll let you, if you have any counsel in mind, you can phone any counsel you want to, you can do it right now.

"A. All right.

"Q. Who do you have in mind?

"A. Well, I'd like to call Ray Simpson in Long Beach I don't have much money but I would like to call him and ask him if there isn't some recourse to attorneys now.

"Q. As I said before, if you don't have money to appoint to hire counsel at the time that you're arraigned the court will appoint a public defender. The only way, as I understand law, if I'm not correct you correct me, Mr. Alexander, the court has to appoint the public defender and the only way the court can appoint the public defender is, No. 1, that you be actually formally charged by a complaint and, No. [fol. 828] 2, that you make a statement to the Court that you don't have money to employ counsel.

"By Mr. Alexander: At your request the court will appoint the public defender if you do not have a counsel at your own choosing.

"A. Is it possible for me to request counsel at this point?

"By Mr. Roll: If you think you can get one without money, if you want to call this man it's perfectly all right with me.

"A. I would like to make several.

"Q. No, not several. You pick one man. I would be perfectly willing to have you call this lawyer.

"A. I would call Ray Simpson and ask him.

"By Mr. Hooper: There's one point I'd like to bring up here. The money that you were booked with, you told me part of it came from Mrs. McCauley's purse, so that money is held as evidence so that money won't be available for attorney's fees.

"By Mr. Roll: You understand that, don't you?

"A. Yes, uh-huh.

"Q. Let me ask you this question, what you told the officers, did you tell them the truth?

"A. As nearly as I was able, I think.

[fol. 829] "Q. And the secretary will put this call through.

"A. Could we wait, Mr. Roll, until that is forthcoming? I realize that my funds are very limited, on the other hand I also realize that if a person is thrown to the discretion of the court in appointing a public defender that that is one recourse. I also know, however, that there are attorneys who would take a case such as this without a financial interest.

"By Mr. Hooper: I might point out one thing here, John, that this session here is an informal interview. If what you told us earlier today is true we want to go over those points so the District Attorney's office is familiar with the case and this interview here is an informal affair and it has no particular bearing on the case. We went over it with you ourselves, both at the office and at the house and we're familiar with the facts but the District Attorney's office is not at this time.

"A. I appreciate that, as you know all the way along since this investigation started I have attempted to get counsel. I have asked when I could have counsel, when I could make approaches to get counsel and I appreciate the fact that this is reiteration of what I have already said but my interest in having counsel is the same as it has been and I will, of course, be anxious to have counsel and I have been.

"By Mr. Roll: I've tried to explain it to you the best I [fol. 830] can, that's the only way I can explain it, unless Mr. Alexander has something to add to it.

"By Mr. Alexander: No, that's about as

"A. If I have recourse to try to get an attorney, I would like to try to get one.

"By Mr. Roll: I told you right now my secretary is making the phone call, all we're interested in from our standpoint is the facts of this situation. If you don't want to tell them to us that's your privilege. If you've got anything to offer

you can offer it, if you haven't, it's all right with me. I've told you, you've told the officers about it, you told me a little while ago that you told me the truth, now is that right?

"A. Do you mind?

"Q. I'm asking you if you told the officers a little while ago, if you didn't say to me that you told them the truth, is that right?

"A. I feel that I told them as near as I could express it.

[fol. 831] "By Mr. Hooper: In this interview, John, it doesn't serve any purpose except to acquaint the District Attorney's office with the case. The counsel, which I agree you should have one, but the first time your counsel will appear would be at your arraignment, unless you're permitted a hearing, you don't need a counsel in a case like this.

"A. I don't need one. Do I have a right to have one?

"By Mr. Roll: If you can hire one at the, if the man says he'll represent you, yes, he can walk in here and we'll let him come in the room here and if he tells you something you can follow his advice but if the situation is such as you can't procure counsel, I'm not going to wait for a week before you get counsel before I talk to you, you can understand that."

By Mr. Alexander:

Q. Is that the point where the telephone call was put through?

A. That is the point, yes, sir.

Mr. Alexander: Under the Court's ruling, I take it that is as far as we can go. No cross examine.

Mr. Armstrong: Let me have just a moment, your Honor, to examine this.

The Court: All right.

[fol. 832] Mr. Armstrong: (Examining statement.) No questions.

The Court: All right, that's all.

(Witness leaves stand.)

The Court: Next witness for the People.

Mr. Alexander: If the Court please, we had expected to be the remainder of the afternoon, at least, with this one wit-

ness, and I don't think we have another witness available at this time.

The Court: Very well.

Ladies and gentlemen of the jury, do not discuss the case among yourselves nor talk to anyone about it, nor allow anyone to talk to you about it. Do not form nor express any opinions or conclusions about the case until the matter is finally submitted to you. We will adjourn for the day and resume at 10:00 o'clock tomorrow morning.

(Whereupon the trial of the hereinbefore entitled cause was adjourned at 4:12 o'clock p.m., Monday, November 28, 1955, to resume Tuesday, November 29, 1955, at 10:00 a.m.)

[fol. 832a] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

Santa Monica Dept. B Hon. Stanley Mosk Judge

[Title Omitted]

Transcript of Proceedings—November 29 and 30, 1955

[fol. 833] (The following proceedings were had out of the presence of the jury:)

The Court: The record will show the jury is not present.

Mr. Alexander: If the Court please, I am a little in doubt as to the proper procedure. However, I feel the Court will permit me, in view of the Court's ruling yesterday, that in view of the condition of the record, the contradiction of my statement to the Court about the manner in which that telephone conversation was recorded, I would like the Court's permission to make an offer of proof. I think it is proper that it be done, in the interests of protecting the reputation of certain people, including myself, and that of Mr. Roll. I feel that everything that was done there was done in good faith, and for the purpose of the record I am asking the Court to grant me permission to make an offer of proof.

The Court: You may.

Mr. Alexander: If the Court please, I offer to prove that the statement that I made to this Court of the manner in which the recording was made—if the Court wishes me to make that offer of proof under oath, I should be happy to do so. If the Court wishes to accept my statement that [fol. 834] I made yesterday as an offer of proof, well and good, or if your Honor wishes me to repeat it——

The Court: (Interrupting) As an officer of the court, your statement is accepted.

Mr. Alexander: Thank you. I wish to prove, if the Court please, that upon the completion of the telephone call that was testified to yesterday, the first one to speak was the defendant Crooker. That he said, "You see, Mr. Roll, I cannot fill certain of the details of this crime, and I can't do it but I am——

"Q. By Mr. Roll: Look, I am not going to ask you to fill any details whatsoever. If you want to tell me the story as you remember, I am giving you that privilege right now. If you want to, you can do so. If you don't want to answer my questions, you can refuse to give me any answers you want to on the ground it would tend to incriminate you. I am giving you that privilege. I am going to ask you some questions. If you feel you don't want to answer, you just say, 'I refuse to do so on the grounds it might incriminate me.' Is that fair enough?

"A. I will try to be as frank and thorough as possible, and under the circumstances I will try to reiterate what I know about this matter.

[fol. 835] "Q. By Mr. Roll: I want you to understand this. Insofar as anything you say to me, it will be free and voluntary on your part. No promises of immunity or hope of reward offered you. No threats or violence exercised upon you whatever. Do you understand that?"

If the Court please, as part of our offer of proof, we offer to play the entire recording before this court or the jury to show that after that conversation the defendant had with his attorney—that after being advised by Mr. Roll in the manner in which he was advised, at that time the defendant made a complete, detailed statement of the crime, which we contend is a confession.

I believe that completes the offer of proof, if the Court please.

The Court: Do you object to the offer of proof?

Mr. Armstrong: I object to the offer of proof. Does the Court wish to hear me?

The Court: Objection sustained. You may bring the jury out.

(Whereupon the following proceedings were had in the presence and hearing of the jury:)

Mr. Alexander: There is a slight correction in the transcript. Page 806, Line 18, instead of the words "District Attorney" that should be "defendant."

[fol. 836] The Court: We will make that change by interlineation. The jury is now present. Ladies and gentlemen of the jury, at the close of yesterday's session, the Court permitted the reading of that part of a statement taken in the office of the District Attorney prior to the placing of a call to Attorney Ray Simpson. Now, even though no specific objection to that phase of the statement was made by counsel, the Court, after hearing the document read, is of the opinion that a portion thereof may have been admitted inadvertantly and erroneously. Therefore, on the Court's own motion, and out of an excess of caution, all the statement read by Miss Johnson, after the defendant's request for counsel, is ordered stricken from the record. That includes everything after Page 6, Line 11, of People's Exhibit 29 for identification, and everything between Page 825, Line 18 of the transcript, through Page 831, Line 21.

In other words, members of the jury, you are to completely disregard, as though you never had heard it, all of the statement taken in the District Attorney's office after the defendant requested an attorney. After you begin your deliberations, if any of you have any question as to where that point is and as to the only portions of the statement admitted into evidence, we shall have those portions admitted into evidence reread to you.

[fol. 837] Mr. Alexander: Your Honor, forgive me, please. Did your Honor say after Page 6, Line 11?

The Court: That is correct.

Mr. Alexander: To the conclusion of what she read?

The Court: That is correct.

Mr. Armstrong: Would your Honor give the page and line of the daily transcript?

The Court: Page 825, Line 18 through Page 831, Line 21.

Mr. Armstrong: Your Honor, may we approach the bench a moment, please?

The Court: You may.

(Whereupon the following proceedings were had at the bench out of the hearing of the jury:)

Mr. Armstrong: Your Honor, I realize that the Court is making this motion, being solicitous of the rights of the defendant, but directing the Court's attention to Page 825, Line 19, the defense feels that that statement is corroborative of the defendant's position throughout, and desires to have that portion in, and further, the defense feels that the statement of Mr. Hooper that appears on Page 831, Lines 1 through 8, is a defense point, in that it tends to refute the testimony of Mr. Hooper, and the previous reference also [fol. 838] tends to refute the testimony of all police officers present, because the fact that the police officers apparently, from this record, felt free to interject comments whenever they liked, shows a certain significance to the fact that when the defendant said, "I am just saying this for the record. I made this request many times without avail and I do want counsel," the fact that no police officers demurred and said, "That isn't so," the defendant feels tends to refute their testimony, and it is corroborative of his testimony that he had, prior to ever consulting with his attorney, had constantly demanded counsel as he had testified to, and this statement by Mr. Hooper on Page 831 shows the state of mind of Mr. Hooper. He says——

[fol. 839] The Court: (Interrupting) I have it before me.

Mr. Armstrong: "You don't need a counsel in a case like this," shows his state of mind.

The Court: Well, Mr. Armstrong, it is the Court's position that all of the proceedings that took place after the defendant asked for counsel, and wasn't given an opportunity for private consultation with the attorney of his choice, are improper.

Mr. Armstrong: Yes, your Honor.

The Court: If you disagree and want that entire portion of the statement in evidence, as it was admitted yesterday,

I will do this out of regard for the rights of the defendant, but we can't pick excerpts from an improperly admitted document. We have to take it all or none. That is, all up to the point of the telephone conversation, or none. If you want it all in, we will let it stay in.

Mr. Armstrong: I want to read this in detail, so I will renew this or abandon this at the recess—after the recess—after I have had an opportunity to examine each line of this to be sure that I do want it all in, or I want none of it in. I will have to waive the balances of it. My feeling yesterday was that it was advantageous, and, therefore—particularly with the first portion of it, your Honor, on Page 831, I think that—perhaps the Court started st iking a little bit too soon. Not 831, the beginning. What page was that?

[fol. 840] The Court: 825.

Mr. Armstrong: 825, yes. In other words, if the Court will just expand it to include the request for counsel, that wouldn't seem inconsistent with what the Court just said. In other words, the testimony goes up to the place, "May I interrupt you just for a moment?" That leaves us in the air. Then the, "Q. Surely," and then the request is made for counsel.

I think perhaps the Court could exclude beyond that point and leave that portion in to show the jury at which point we are stopping after the request for counsel, because the Court is stopping before the request for counsel is even made.

The Court: I can't agree with you. The jury must not be concerned with the reasons for excluding evidence.

Mr. Armstrong: I am aware of that, your Honor.

The Court: And the Court determines what is admissible and what isn't. The Court has determined that everything before demand for counsel is made is admissible. Everything after is not. On the other hand, if you find that what took place after the request for counsel is not objectionable to the defendant, that is another matter. We can consider that. If you want to waive your objection to that portion——

Mr. Armstrong: (Interrupting) I take it, from what the Court is saying, if I waive my objection, I would be waiving my objection up to the point of the telephone conversation, [fol. 841] not as to that entire exhibit?

The Court: No. I don't believe we can take excerpts out of an inadmissible document. Either you will have to waive your objection to the whole document, or it will have to be excluded as being inadmissible.

Mr. Armstrong: Then I have no objection.

Mr. Alexander: Pardon me. What is the status now? Your objection has been withdrawn, is that right?

Mr. Armstrong: Yes, completely.

Mr. Alexander: Now, we might advise your Honor that there is a possibility that we will be finished this morning.

Mr. Armstrong: This morning?

Mr. Alexander: Yes.

(The following proceedings were had in open court with the jury being present:)

Mr. Alexander: Your Honor wishes to proceed?

The Court: Yes.

Mr. McCurdy: Call William Stambler.

Mr. Armstrong: Before the witness comes in, if the Court please, I would like, yesterday I had an objection, if the Court will recall, to this exhibit (referring to exhibit on blackboard), and I think probably the prosecution will stipulate with me that there are certain changes that must be made on this exhibit.

The Court: That is exhibit number——

[fol. 842] Mr. Alexander: 23.

Mr. Armstrong: Exhibit Number 23, yes. In the first place, the north arrow should point this way (marking on exhibit). Purdue Street is up here. The porch or the ledge that has been testified to——

The Court: Before you write on the exhibit, let's make sure there is a stipulation to that effect.

Mr. Alexander: We cannot stipulate to that, if the Court please, because that is not correct. We will stipulate Purdue should be on top.

Mr. Armstrong: Purdue is over here. Then will you stipulate further that the main entrance to the building is on Purdue, and that the main entrance to the building is directly—the ledge with the steps is directly under what is marked "squad room 2" or "squad room" here, and the steps are across here.

Mr. Alexander: If the Court please, I think we better go out there and take a look at it. I have never examined it.

So suppose we withhold that until we go out and take a look at that area.

The Court: All right, we will consider that after the noon hour.

Mr. McCurdy: Mr. Stambler, will you take the witness stand, please, sir?

The Court: You have been sworn. Please be seated and state your name again.

[fol. 843] WILLIAM STAMBLER, having previously been duly sworn, resumed the stand and testified further on behalf of the People, as follows:

The Witness: William Stambler.

Direct examination.

By Mr. McCurdy:

Q. Mr. Stambler, will you tell us what experience, if any, you have had in the field of fingerprinting?

A. I had about nineteen years experience with the Los Angeles Police Department, close to twenty.

Q. What has that consisted of?

A. Of going to the scene of the crime and dusting for latent fingerprints.

Q. How do you dust for latent fingerprints?

A. We use two powders, one is a silver powder and the other is a powder of lamp black, use a brush.

Q. What do you mean by the term "latent print"?

A. A print that is an undeveloped print, or a print that can't be seen by the naked eye until it is developed.

Q. When dusting for latent fingerprints, just what do you do?

A. Well, I take and put the brush in the powder and dust if with powder, and if it is a dark surface I use a light powder; if it is a light surface I use a dark powder.

Q. When you apply the powder upon the surface where [fol. 844] there is a latent fingerprint, what, if anything, happens?

A. It will develop the fingerprint if there is a print there.

Q. You say it will develop the print; what do you mean by that?

A. It will bring that print out so that you will see the print.

Q. How does it do that?

A. It is because your ridges in the fingers have little small glands in it, and the normal function of the body, there is a sweat gland that leave these ridges with this oil on it; and, of course, this powder that you dust on this print then will adhere to those ridges.

Q. Then it makes a lafent print visible to the eye, is that right?

A. That's right.

Q. Directing your attention to Thursday, July 7th of this year, did you go to number 1100 Somera Road sometime that day?

A. I did, sir.

Q. About when was it that you went there?

A. Around 11:00 o'clock that morning.

Q. Did anyone go there with you that morning?

A. Commander Armstrong and Inspector Kerr.

Q. Was anybody else present at that time?

A. I think that there was a news photographer there.

[fol. 845] Q. After you arrived at that location, did you enter the children's room or the children's nursery at 1100 Somera Road?

A. I did.

Q. After you had entered that location, what did you do?

A. I went to a clothes closet there in the children's room and found a glass there.

Q. Where was the glass?

A. Up on the upper shelf.

Q. I call your attention here to People's Exhibit Number 29 in evidence, and ask you, do you recognize the area shown upon that particular map?

A. I am not quite sure.

Q. This is the area of the house, and this is labeled "maid's room, bath, nursery"?

A. That is the nursery. It was in this room here. I am quite sure it was in the nursery.

Q. Do you recall what closet it was?

A. It was the clothes closet, one of the large closets that is in this nursery.

Q. All right, you may resume the stand, sir.

What, if anything, did you do with this glass that you found at that location?

A. I took this glass off the top of that closet and dusted it for fingerprints.

[fol. 846] Q. Will you describe just exactly what you did in dusting it for fingerprints?

A. I took this glass off the dresser, off the closet, and put it down; and in this glass there was a yellow fluid with dissolved cigarette butts in it.

Q. What did you do with the contents of the glass?

A. Poured it into the bathroom.

Q. Why did you do that?

A. Well, so I wouldn't mess the print up; wouldn't get any water on the outside of the glass.

Q. With relation to the contents, did you smell it?

A. I did.

Q. What, if anything, did it smell like?

A. Well, could have smelled like urine; it was a kind of pungent odor.

Mr. Armstrong: Pardon me, I didn't get that last; what was that last, please?

By Mr. McCurdy:

Q. What did you do with the glass after you emptied the contents out?

The Court: Will you read the last answer?

(Whereupon the reporter read the answer, as follows: "A. Well, it could have smelled like urine; it was a kind of pungent odor.")

Mr. Armstrong: Thank you.

Mr. McCurdy: Read the next question.

(Whereupon the reporter read the question, as follows: [fol. 847] "Q. What did you do with the glass after you emptied the contents out?")

Mr. McCurdy: You may answer.

A. I took the glass—you mean after I dusted the glass?

Q. No, after you had taken the contents out, where did you go; what did you do with the glass?

A. I stayed right there at the scene and dusted it.

Q. Describe what you did in the dusting process.

A. I used the silver powder and brush.

Q. When you applied that silver powder to it—to what did you apply the silver powder?

A. Applied the silver powder to the glass.

Q. That is the glass you found in the closet?

A. That's right.

Q. After you had applied the powder to the glass, what, if anything, did you notice about the glass?

A. I developed the print on this glass.

Mr. McCurdy: If the Court please, I have here a glass that appears to have powder on it and some scotch tape. May it be marked People's Exhibit next in order?

The Court: It may be marked People's Exhibit Number 30 for identification.

By Mr. McCurdy:

Q. Mr. Stambler, I show you People's Exhibit Number 30 for identification, and ask you, do you recognize that?

[fol. 848] A. I do.

Q. Is that the glass that you have been telling us that you found there on that occasion?

A. That's right.

Q. Is that the glass upon which you applied the powder?

A. It is.

Q. Is that the glass upon which, after the application of the powder, you found a fingerprint?

A. That's right, sir.

Q. Now, there appears to be a piece of black paper in there; was that in the glass at the time you found it?

A. No, sir.

Q. Do you know how that black paper got in there?

A. Yes, we put that in so that we could photograph it and use it for a background.

Mr. McCurdy: If the Court please, I have here what appears to be a photograph. This photograph shows in the center what appears to be fingerprints. May that be marked

for identification People's Exhibit Number 31, next in order?

The Court: It may be marked People's Exhibit Number 31 for identification.

Mr. McCurdy: Then I have here what appears to be a fingerprint classification card bearing the signatures "John Russell Crooker, Jr.," and "William Stambler." May it be marked People's Exhibit next in order, number 32 for [fol. 849] identification.

The Court: It may be marked People's Exhibit Number 32 for identification.

By Mr. McCurdy:

Q. Mr. Stambler, I call your attention to People's Exhibit Number 31 for identification, and ask you if you recognize that.

A. I do.

Q. What is that a photograph of, sir?

A. Of the print on the glass.

Q. Was that taken under your direction, sir?

A. It was.

Q. And is it a true photograph of a portion of the glass, People's Exhibit Number 30 for identification?

A. It is.

Q. Can you tell us what portion of People's Exhibit Number 30 for identification, in other words—strike that out, please.

Can you tell us what portion of the glass does that picture number 31 show?

A. It shows a portion of the glass with a print on it.

Q. That is the print you have been talking about?

A. That is, sir.

Q. I believe there is some scotch tape upon the glass, People's Exhibit Number 30; do you know how that got there?

A. Yes, I put that on so that the print would not be [fol. 850] messed up.

Q. Next is People's Exhibit Number 32 for identification, and I ask you if you recognize that exhibit?

A. I do.

Q. The fingerprints that appear on that chart, were they placed upon it by someone in your presence?

A. I rolled Mr. Crooker's fingerprints there.

Q. Those are the fingerprints of the defendant, is that correct?

A. Yes.

Q. Upon the back of the exhibit, People's Exhibit Number 32 for identification, there appears to be three additional prints. Were they also placed upon that exhibit in your presence by someone?

A. They were. I rolled those prints.

Q. They are also the defendant's prints?

A. They are, sir.

Q. And of what finger on the back of 32?

A. The right thumb.

Q. I show you, sir, People's Exhibit Number 24 in evidence, and direct your attention to the closet shown in that photograph, and ask you if you recognize the closet shown in that photograph?

A. I do.

Q. Is that the closet in which you found the glass?

A. It is.

[fol. 851] Q. Directing your attention to the shelf of the closet as shown in the photograph, there appears to be a glass standing there. Do you see what I mean?

A. Yes, sir.

[fol. 852] Q. Is that the glass you removed on the 7th of July of this year?

A. That is.

Q. That is the glass before you marked People's Exhibit No. 30 for identification?

A. It is.

Mr. McCurdy: Cross examine.

Cross examination.

By Mr. Armstrong:

Q. Mr. Stambler, in taking these fingerprints, not these particular ones, but just fingerprints in general, the person's finger leaves an impression on a smooth surface, is that not right?

A. That's right.

Q. So that, I take it, if I were to press my fingers on this table, this being a fairly slick surface, it would be much

easier to take the prints than if I pressed it on a book, for instance, a rough surface?

A. That's right.

Q. So it would be easier to take the print off the glass or metal than it would be to take the print off a piece of rough wood?

A. That's right.

Q. In fact, glass or metal is just about the ideal way to [fol. 853] get fingerprints, is that right?

A. That's right.

Q. In addition you told us about there being some sweat glands in the fingers that secrete perspiration, and there is a certain amount of—— Strike that out, please.

After the perspiration dries it is still possible to get a print, isn't it?

A. It is, providing it is under the right conditions, temperature.

Q. Yes, let's suppose a situation, just as a hypothetical matter, that you had a glass that was standing in a closet in a home such as the one you saw at 1100 Somera Road, and a fingerprint was placed upon it, and a period of time, say a half an hour elapsed, or an hour, or more—so that any moisture from perspiration would have obviously dried—you still would be able to get a print, wouldn't you?

A. I would.

Q. As a matter of fact, in addition to what you told us about the perspiration, there is a certain amount of oil in the fingers, as well, is there not?

A. That's right.

Q. That makes a sort of stain?

A. Well, I wouldn't know about stain—it would——

Q. The theory is, after any moisture from an imprint [fol. 854] has long since dried, the print is still there by virtue of some kind of, call it what you will, use the word stain for lack of a better one, that leaves an impression on the glass?

A. Yes, that's right.

Q. That is how you take fingerprints sometime after?

A. That's right.

Q. So that if we had a glass or a piece of metal that had a fingerprint placed on it, let us say a month before the time that you examined it for prints, and the object had not

been exposed to wind or weather or moisture, and was in a place such as you found this, you would still be able to pick up prints?

A. You would probably pick up one but it wouldn't be a sharp print on account of the oils, or whatever it is; secretion of the body, that would harden. Therefore, when you put your dust on this, your powder, it would kind of spread, that being hard, and it would dull the print. It wouldn't be a sharp print.

Q. Well, with the science that you apply to fingerprints, it is not claimed by fingerprint experts, is it, that one can place the time that a print was left?

A. No.

Q. In other words, if you saw a fairly sharp, clear print [fol. 855] it would be difficult for you to say whether the print had been placed there—it would be impossible for you to say whether the print had been placed there two hours before or, say, ten hours before, is that not right?

A. That's right.

Q. And similarly it would be impossible for you to say whether the print had been placed there fifteen hours or thirty hours?

A. Yes, that's right.

Mr. Armstrong: Thank you. I have no further questions.

Re-direct Examination.

By Mr. McCurdy:

Q. Based on your past experience and training and observation of fingerprints appearing on the glass, People's Exhibit No. 30, have you an opinion whether that is a fresh or an old print?

A. I would say that was a fresh print.

Q. By fresh, what period of time would you use?

A. Well, that would be hard to estimate.

Mr. McCurdy: I have no further questions.

[fol. 856] Re-cross Examination.

By Mr. Armstrong:

Q. On that point, by "fresh," can you give us the maximum time when you say a fingerprint is fresh; would you mean less than a week?

A. Yes.

Q. You could say less than a week, then?

A. Yes.

Q. Would you say less than five days?

A. Yes, probably could.

Q. Would you go any further than that by maximum time?

A. Well, as I said, it is according to the conditions of that room, the temperature of the room.

Q. I am talking about the particular room, were you able——

A. That is what I am talking about.

Q. —to form an opinion?

A. No.

Mr. Armstrong: That is all, thank you.

Mr. McCurdy: No questions.

(Witness leaves stand.)

Mr. McCurdy: Call Mr. Armstrong, please.

Mr. Armstrong: Pardon me, just a moment, Mr. Stambler (to the court) May I confer just a moment?

(Colloquy between Attorney Armstrong and Officer [fol. 857] Stambler outside of the hearing of the jury and Court Reporter.)

Grover H. Armstrong, called as a witness on behalf of the People, having been previously sworn, resumed the stand and testified further as follows:

The Court: You have already been sworn. Be seated and state your name, please.

The Witness: Grover H. Armstrong.

Direct Examination (Continued).

By Mr. McCurdy:

Q. Lieutenant, directing your attention to William Stambler, are you acquainted with him?

A. I am, sir.

Q. Have you been to the address of 1100 Somera Road during July of this year?

A. I have, yes, sir.

Q. Specifically directing your attention to Thursday, July 7th of this year, did you go out to No. 1100 Somera Road at some time?

A. I did, yes, sir.

Q. Approximately when was it that you went out there?

A. Close to 11:00 o'clock in the morning.

[fol. 858] Q. Did anybody else go out there with you?

A. Inspector Kerr, Officer Stambler and myself.

Q. Was there anybody else present at that time?

A. There was; there was a photographer present.

Q. A police photographer or someone else?

A. Mr. Hixson, photographer for the Times, I believe it is.

Q. After you went out there with Mr. Stambler, the newspaper photographer, Inspector Kerr, on this case, did you enter the house?

A. I did, yes.

Q. With particular reference to the children's room or the nursery, did the three of you enter that room?

A. Yes, sir.

Q. Did you observe—what did you observe, if anything, that Mr. Stambler did after you arrived in that room?

A. He took a glass from a shelf in the closet and emptied the contents in the toilet and proceeded to print, or dust his prints on the glass.

Q. I call your attention to the photograph marked People's Exhibit No. 24 in evidence and ask you, do you recognize that photograph?

A. I do, yes, sir.

Q. You were present at the time that photograph was [fol. 859] taken?

A. Yes, sir.

Q. When was that taken, sir?

A. It was taken around 4:00 o'clock in the morning of the 6th of July.

Q. And directing your attention to the gentleman appearing in the photograph in the right side there, do you recognize that person?

A. Yes, sir.

Q. Is that yourself?

A. That is myself.

Q. Directing your attention to the shelf shown on the photograph; there appears to be a glass there. Did you notice that at the time the photograph was taken on the 6th?

A. Yes, sir.

Q. The glass that Stambler removed on the 7th, was that the same glass?

A. Yes, sir.

Q. Did you have a fingerprint man with you on the 6th when the photograph, People's Exhibit No. 24 in evidence, was taken?

A. On the 6th?

Q. Yes.

A. No, sir.

Q. You mentioned that there were some contents in the [fol. 860] glass that Stambler poured out; will you tell us what you observed relative to the nature of the contents?

A. There was a brownish-yellow liquid, and floating in that liquid were what appeared to be cigarette butts, maybe three or four.

Q. Did you see or smell the contents of the glass?

A. I did, yes.

Q. What did it smell like to you, sir?

A. It was foul smelling; it could have been urine.

Q. After the contents were poured out, did you observe what, if anything, Stambler did with the glass?

A. Yes, sir, he placed it on a stand under a light after he had dusted it, to take pictures of the glass.

Q. Did you observe anything different about the condition of the glass after he dusted it; that is, from its condition before he dusted it, that you yourself saw?

A. Yes, it was covered with dusting material; other than that it was the same glass.

Q. You are not a fingerprint expert?
A. No, I am not.

Mr. McCurdy: Cross examine.

[fol. 861] Cross Examination.

By Mr. Armstrong:

Q. At the time that you say you saw some cigarette butts or what you took to be cigarette butts in this glass——
A. Yes?
Q. Did you see any other cigarette butts on the premises there when you went out there that day?

Mr. Alexander: That is not proper cross examination, if the Court please; we object to it.

By Mr. Armstrong:

Q. Did you see any cigarette butts on the floor of the closet?
A. I don't recall any, no, sir.
Q. Or immediately adjacent to the closet that you took the picture of?
A. No, sir, I don't recall that.
Q. I don't expect you to know exactly, but approximately how many cigarette butts did there appear to be in the glass?
A. I estimate three or maybe four. They were all disintegrated. The papers were loose.

Mr. Armstrong: Thank you, Lieutenant. That is all.
Mr. McCurdy: You may step down.

(Witness leaves stand.)

Mr. McCurdy: Call Inspector Kerr.

[fol. 862] HENRY W. KERR, recalled as a witness in behalf of the People, having been previously sworn, resumed the stand and testified further as follows:

Direct Examination.

By Mr. McCurdy:

Q. Now, Inspector, directing your attention to Thursday, July 7th of this year, did you on that date go to 1100 Somera Road with some persons during the morning hours?

A. Yes, I did.

Q. And who went there with you at that time?

A. Lt. Armstrong and Officer Stambler.

Q. Was there anybody else present, if you recall?

A. I believe Mr. Durkee was present.

Q. And you are sure of the name, sir?

A. I am quite sure.

Q. After you arrived at that location, did you enter the children's room or nursery?

A. Yes, sir, we did.

Q. And did Officer Stambler enter there while you were present?

A. Yes, sir, he did.

Q. And did you observe what, if anything, Officer [fol. 863] Stambler did?

A. Yes, sir.

Q. And what did he do on that occasion?

A. He removed a glass which was partially filled with an amber liquid which contained several cigarette butts from a shelf in the closet.

Q. And at the time that was removed, did you smell the contents?

A. I did.

Q. What, if anything, did it smell like to you?

A. Urine.

Q. Did you observe—— Strike that.

Had you been out there the day before, that is, Wednesday, July 6th?

A. Yes, sir.

Q. And about what time were you there on that occasion?

A. July 6th I was in the house from approximately 4:00 o'clock until about 5:10 a.m.

Q. That was the occasion when you and other officers were present with the defendant at that moment?

A. Yes, sir.

Q. And while you were there on the morning of the 6th, had you seen the glass that Stambler removed on the 7th?

A. Yes, sir.

[fol. 864] Q. And where was it on that occasion?

A. On the shelf in the closet.

Q. The same shelf, same closet?

A. Yes, sir.

Q. Now, I call your attention to a photograph that has been marked here People's Exhibit 24 in evidence, and I ask you, do you recognize the closet shown in that photograph (showing same to witness)?

A. (Examining same) Yes, I do.

Q. Is that the closet that you first observed the glass in?

A. Yes, it is.

Q. And directing your attention to the shelf, there appears to be a glass shown upon that shelf of that closet. Do you recognize that?

A. Yes, I do.

Q. Is that the glass that Stambler removed on the 7th?

A. It would appear so, yes, sir.

Q. Did you observe what, if anything, Stambler did with the glass after he removed it from the closet?

A. It was carried into one of the bathrooms. The contents were emptied, and the glass was then taken back into this room where it was placed on a sort of a shelf, or part of a built-in chest, after which he dusted it with fingerprint powder.

[fol. 865] Q. Did you observe anything different about the glass after it was dusted from its condition before it was dusted?

A. Yes. I noticed some of the powder particles adhering to what appeared to me to be a fingerprint.

Q. How did you get into the house at 1100 Somera Road on the 7th of July?

A. To the best of my recollection, Mr. Durkee admitted us on that occasion.

Q. And specifically, for the purpose of refreshing your recollection, was there a newspaper photographer present, or a reporter?

A. During part of that time, yes, sir.
Q. Do you know who that was?
A. Mr. Hickson.

Mr. McCurdy: Cross examine.
Mr. Armstrong: No questions.
Mr. McCurdy: You may step down. Call Mr. McLaughlin.

Alfred Reed McLaughlin, called as a witness on behalf of the People, being first duly sworn, was examined and testified as follows:

The Clerk: Be seated, please, and state your name.
The Witness: Alfred Reed McLaughlin, M-c L-a-u-g-h-
[fol. 866] l-i-n.
The Clerk: Will you spell your middle name?
The Witness: R-e-e-d.

Direct Examination.

By Mr. McCurdy:

Q. Mr. McLaughlin, what is your business or occupation?
A. I am a Sergeant of Police for the Los Angeles Police Department, assigned to the Latent Fingerprint Section of the Scientific Investigation Division.
Q. How long have you been so assigned?
A. With the exception of two years in the Armed Forces, since 1941.
Q. And during that period of time have you had training, education, in the field of fingerprinting?
A. Yes, I have.
Q. Would you tell us what that has consisted of?
A. During that time I have developed many latent fingerprints. I have made numerous comparisons daily of inked impressions against latent impressions.
In 1951 I taught a course of instruction at City College on fingerprint identification and classification. In May, 1949, I attended a course of instruction on advanced latent fingerprint work conducted by Gerard J. Engart, who was the [fol. 867] Chief of the Technical Services Section of the Identification Division of the Federal Bureau of Investigation.

I have testified in Superior and Municipal Courts in the County of Los Angeles, County of San Bernardino, and the State of Arizona, on more than four hundred occasions.

I am currently a member in good standing with the International Association for Identification, and I receive their year book which contains the proceedings of their yearly conferences.

I am a member in good standing of the California State Division of the International Association for Identification. I am a life member and junior past president of the Southern California Association of Fingerprint Officers, and I have read numerous publications on fingerprint identification. Some of these are "Fingerprints," "The Classification of Fingerprints," "The Chemical Development of Latent Fingerprints," "The Introduction of Latent Fingerprint Evidence in Court" ——

Mr. Armstrong: (Interrupting) Stipulate the witness is qualified.

Mr. McCurdy: I think the witness is, but I think the jury should have the benefit of knowing how well qualified he is.

Mr. Armstrong: If it will save time, the defendant will [fol. 868] stipulate that the fingerprint on the—that the photograph of the fingerprint on the glass is a true photograph, that People's Exhibit 32, the classification card, is the defendant's fingerprints, and that the photograph in People's 31, as taken from People's 30, is also the defendant's fingerprint. Will that save some time?

Mr. McCurdy: I want to be sure I understand the stipulation. The stipulation is that Exhibit 31 is a true photograph?

Mr. Armstrong: Of Exhibit 30, of the print on Exhibit 30.

Mr. McCurdy: Of the print on Exhibit 30, and that the fingerprint card, 32, are the defendant's fingerprints.

Mr. Armstrong: So stipulated.

OFFERS IN EVIDENCE

Mr. McCurdy: The People will accept that stipulation and offer in evidence Exhibit 31 and Exhibit 32.

Mr. Armstrong: And further stipulate that a comparison between the fingerprint on the glass, that is People's 30, and as photographed in 31, and a comparison of the finger-

print classification card, People's 32, discloses the fact that the fingerprint on the glass is the fingerprint of the defendant John Crooker.

[fol. 869] Mr. McCurdy: The People will accept that stipulation and will offer in evidence 30, 31 and 32.

Mr. Armstrong: No objection.

The Court: They will be marked People's 30, 31 and 32 respectively in evidence.

Mr. McCurdy: If the Court please, I have here an exhibit containing on the left side what appears to be a portion of a fingerprint, and on the right-hand side a fingerprint. The one on the left is labelled "ink," and the one on the right "latent."

May this be marked as People's exhibit next in order, 33 for identification?

The Court: People's 33 for identification.

By Mr. McCurdy:

Q. Mr. McLaughlin, I call your attention to the exhibit here which has been marked People's 32 for identification—Mr. Alexander, is the glass 30?

Mr. Alexander: Yes.

Mr. Armstrong: Yes.

The Court: The glass is 30.

Mr. Armstrong: The photograph is 31, and the card is 32.

By Mr. McCurdy:

Q. Mr. McLaughlin, directing your attention to this last exhibit which I am going to mark on the back 33 (marking same), I ask you, do you recognize it?

[fol. 870] A. (Examining same) Yes, sir, I had the enlargements made appearing upon People's 32 under my direction and supervision.

Q. Are the enlargements appearing upon that exhibit true and correct reproductions or representations of the other exhibits there, 31 and 32?

A. That is a correct—those are correct reproductions of portions of People's Exhibits 31 and 32.

Q. And will you tell us what portions of People's 31 and 32 appear upon 33, which is before you?

Mr. Armstrong: Your Honor, to which the defendant objects on the grounds of no materiality, in the face of the stipulation, and if the People like, the defendant will further stipulate that those represent enlargements of a latent print and fingerprint and the comparison shows they were made by one and the same person.

Mr. McCurdy: Will you add to that stipulation, by one and the same person, namely, the defendant?

Mr. Armstrong: Yes.

Mr. McCurdy: The People, as modified, will accept that stipulation.

The Court: Do you offer People's 33 in evidence?

Mr. McCurdy: The People now offer People's 33 in evidence.

The Court: It will be marked People's 33 in evidence.

[fol. 871] Mr. Armstrong: Now, it is implicit in this stipulation, I take it, and understood, that the last exhibit is an enlargement of the print on the glass, and that is what we are stipulating to, that the print on the glass has been compared with the other prints. All these things refer to the same fingerprint, 30, 31 and 32, is that right?

Mr. McCurdy: That would be true, with the exception of 32 which has numerous——

Mr. Armstrong: (Interrupting) Which has all the fingerprints on it. It is the same fingerprint in the McCauley household that we are talking about all the time, the one on this glass?

Mr. McCurdy: That is correct.

Mr. Armstrong: All right.

The Court: Anything further of this witness?

Mr. McCurdy: There are some things with respect to Exhibit 33 that I would like to ask this witness. I did not anticipate the stipulation, so if your Honor will bear with me for a moment?

The Court: Very well.

By Mr. McCurdy:

Q. Mr. McLaughlin, there appear to be certain lines placed upon Exhibit 33. Did you place those on there?

A. Yes, I did.

[fol. 872] Q. For what purpose did you place those lines upon 33?

A. For the purpose of illustrating the individual characteristics upon which I based my identification.

Q. And how many points of comparison did you find between the two prints appearing upon People's 33 in evidence?

Mr. Armstrong: To which the defendant will again object on the basis of immateriality in view of the stipulation.

The Court: You may answer.

The Witness: I marked off ten identifying characteristics and found, oh, I don't recall offhand, perhaps ten or twelve additional characteristics which I did not mark off with red lines.

By Mr. McCurdy:

Q. In other words, those lines show ten separate characteristics of similiarity that you found between the two prints shown there, is that correct?

A. Yes, sir.

Q. During your study of the field of fingerprints, have you ever found two individuals with the same fingerprints?

A. No, sir, I have not.

Q. In your studies have you ever run across any case in which two individuals had the same fingerprints?

[fols. 873-877] A. There is no such recorded case.

[fol. 878] Henry W. Kerr—Recalled

Direction examination.

By Mr. Armstrong:

Q. Inspector Kerr, you have previously told us that you were the senior Los Angeles police officer attached to this [fol. 879] case, is that not so?

A. Yes, sir.

Q. And did you not inform us that—or can you inform us if the dusting for fingerprints that was done by Officer Stambler was done under your direction and supervision?

A. No, sir, it was done in my presence.

Q. Done in your presence, but not under your direction?

A. That is correct.

Q. Now, you were in the room where the deceedent's body was found, were you not?

A. Yes, sir.

Q. And you recognize this as Defendant's Exhibit A in evidence. You recognize this scene as being a portrayal of that? (Showing same to witness.)

A. (Examining same.) I do.

Q. Now I will show you here on these drapes in the background what appears to be some sort of stains. Did you have occasion to examine those?

A. I looked at them.

Q. And from your looking at them, did you form an opinion as to what they were?

A. I formed the impression that they were probably blood stains.

Q. To your knowledge, did any police officer connected with the investigation of this case make any analysis of these blood stains?

[fol. 880] Mr. Alexander: That is immaterial, if the Court please. It doesn't prove or disprove any of the elements of this case.

The Court: You may answer.

The Witness: I don't know.

By Mr. Armstrong:

Q. All right. Inspector Kerr, you are familiar with the West Los Angeles Police Station, are you not?

A. Yes, sir.

Q. I will show you here a diagram that has been marked People's 23 in evidence, and ask you if you recognize the area that is portrayed here, the Commander's office, squad room, squad room, reception office (indicating)?

A. Yes, sir.

Q. Are you oriented to this?

A. Yes.

Q. Will you indicate to us where Purdue Avenue is in respect to this diagram?

A. Purdue Avenue is on this side of the station (indicating).

Q. Runs along the long way of the diagram, is that right?

A. Yes, sir.

Mr. Armstrong: I will make this mark a little heavier.

Mr. Alexander: Suppose you do that in red so we can get the distinctions.

[fol. 881] By Mr. Armstrong:

Q. All right. Fine. We will mark Purdue Avenue here (marking same), and for the record we will mark this D-1 (marking same), to indicate that.

Now, along this side of the building (indicating), what is there right here adjacent to the building (indicating)?

A. A drive-way.

Q. That is a drive-way. Is it an alley or a drive?

A. It is a drive-way for the police station.

Q. Where does the drive-way lead to?

A. To the rear of the building.

Q. All right. We will mark, then, along here "drive-way" (marking same), and we will mark that D-2 (marking same).

Now, as far as directions go, from what you have identified, what is north? Which way is north?

A. It is my impression that north would be in that direction (indicating).

Q. Facing out here (indicating)?

A. Yes.

Q. All right, we will make a new north arrow and we will mark this D-3 (marking same).

Now, this police station has a main entrance for the public to enter, does it not?

A. There are three entrance doors in the front portion of the building.

[fol. 882] Q. In the front portion of the building, is there an entrance that has stairs and it has ledges alongside of each—on each side of the stairway going into the front part of the building?

A. There might be a narrow ledge on each side.

Q. Well, would it refresh your recollection if I asked you if in this area here (indicating)—it is on the first floor, of course—there is about a three-step up entranceway, and the doors of the police station are right here (indicating)?

A. Roughly, yes.

Mr. Armstrong: We will mark that in there, and then on each side of this stairway there is this narrow ledge that you referred to?

A. Yes.

Q. So we will mark here these ledges, indicating steps here; and we will mark this D-4. Now as to this area over here in the drive-way, is there a stairway directly under these windows of Lt. Armstrong's office?

A. No, sir, the side entrance of this drive-way would be approximately in this location.

Q. All right, we will put the side entrance here, and then we will mark this side entrance, and we will call that D-5.

On this side entrance there are no steps going up the [fol. 883] ledges on the side here, as there are in the front, are there?

A. No, I believe these steps are recessed.

Q. They go down into the building rather than have an elevation on the outside; they go down into the building?

A. No, they go up to get into the building.

Q. But the steps, themselves——

A. The steps, themselves, are indented, inside the building line, as I recall.

Q. As far as the building line is concerned, there would be no extension out of the drive-way?

A. Right.

Q. I understand, from what you said, that there is no ledge or steps built out right here, is that right?

A. No, sir.

Q. Except as we have corrected it, you do recognize this diagram as being substantially correct, with this counter here and this desk here, and the door going into the commander's office, and so forth?

A. Yes, sir.

Q. And then also a closet here, and a door coming out of the squad room with desks placed about this way?

A. Yes, sir.

Q. And this door going out here and these desks placed in this position to each other?

A. Yes, sir.

Q. So now as we have the diagram here, would you say [fols. 884-885] the diagram is substantially correct?

A. I would.

[fol. 886] GROVER H. ARMSTRONG—Recalled.

Direct Examination.

By Mr. Armstrong:

Q. Lt. Armstrong, if I could direct your attention to People's Exhibit Number 23 in evidence, you will notice we have made some corrections on this since you last looked at it, probably. Now I will ask you if you can orient yourself on this. You see what we have here, side entrance drive-way. We have changed the north line. We have Purdue Avenue up here; and we have indicated the main entrance of the [fol. 887] police station here.

As this is now corrected, do you recognize that as being a fairly accurate portrayal of the building with the additions that remain?

A. Yes, I would say that was pretty close.

Q. All right. Now directing your attention particularly to the area of your office; is there a stairway with ledges on the side underneath these windows which are on the south side, according to the corrected north-south line marked D-3 there on the east side, according to the original north-south line in the drawing—is there a ledge or a stairway extending into what has been marked drive-way on the first floor?

A. I am not sure I follow you, counselor. There is an entrance to the driveway as you have indicated here, it is a side entrance, is that what you mean?

Q. Yes. We have established that. Is there another building entrance right directly under this office on the first floor?

A. No.

Q. Is there a sort of stair-way there, or a ledge similar to these that extend out on either side of the stairway underneath these windows of the first floor?

A. No stairway, no.

Q. Now directing your attention to what are the windows in your office that are on the north and south, according to [fol. 888] the original north and south line, or would be on the east side, according to this corrected north and south line—is there any sort of a built-out stairway or ledges on the side underneath these windows to your office on the first floor?

A. No, there is only the front entrance.

Q. This is the only place where there is a stair-way with ledges along the side, is that right, or front of the building?

A. There are no other ledges along the windows, if that is what you mean.

Q. About how wide are the ledges?

A. Just ordinary windows width—they are not ledges, they are part of the base of the window. I believe those are cement or brick or something like that, if that is what you want.

Q. As far as this type of ledge that comes out here flanking the stairway, there is none other down in here?

A. No.

Q. Lt. Armstrong, directing your attention to a photograph that has been marked People's Defendant A in evidence, I believe you previously testified that you recognize that scene as being the scene of a bedroom of Norma McCauley as you observed it on the fifth of July, is that right?

A. No, sir, I haven't seen this photograph on the stand. [fol. 889] Q. Do you recognize this, then?

A. Yes, it looks like a photograph of Norma McCauley's bedroom.

Q. When you went there, did you have occasion to observe what in the photograph appear to be some stains here on the drape?

A. Yes, I did.

Q. In your investigation and from your experience in past investigations did you form an opinion as to what these stains are up here?

A. I thought they were blood.

Q. Then did you make any minute or detailed examination of these stains?

A. No, I did not.

Q. Did you cause any examination to be made by any person under your supervision of those stains?

A. No, sir.

Q. To your knowledge, was any examination made by any member of the police department of those blood stains?

A. There was a crime laboratory technician at the scene when I arrived, one Mr. Ray Pinker. Whether he made an analysis of this blood, I don't know.

Q. At least not in your presence?

A. No, sir.

Q. Well, there are some smaller smatterings in addition [fol. 890] to the chaise lounge that is portrayed here specifically on this little chair, the chair that has the wrought-iron base, do you recognize that; do you remember seeing that on the scene?

A. I believe so, yes, sir.

Q. I will get you a better picture of it; here is a picture, I am referring to People's Exhibit Number 16 in evidence. Do you recognize the wrought-iron leg chair portrayed there?

A. Yes.

Q. Did you observe any stains on that chair, any portion of it?

A. I believe there were blood splatters on this chair.

Q. As far as you, personally were concerned, you didn't cause to be made, or didn't make, yourself, any minute or detailed inspection of those?

A. No, sir.

Q. You made no analysis of those blood stains?

A. No, sir.

Q. Nor caused any analysis to be made?

A. No, sir.

Q. You testified earlier that you participated in the examination or interrogation of the defendant, did you not?

A. Yes, sir.

Q. And do you recall the defendant at one time having [fol. 891] told you he had been down at the beach on the 4th of July?

Mr. Alexander: That is objected to as assuming facts not in evidence. He is assuming the defendant did say that to this witness, and he is asking him if he remembers it.

The Court: Objection sustained to the form of the question.

By Mr. Armstrong:

Q. Did the defendant make any statements to you during your interrogation as to where he had been on the 4th of July?

A. Yes, sir.

Q. Where did he say he had been?

A. Been to the beach.

Q. During your interrogation of the defendant did you observe whether or not he had a sunburn on the back of his neck?

A. No, I don't recall him having any sunburned neck, no, sir.

Q. To the best of your recollection he did not appear to be sunburned?

A. No, sir.

Mr. Armstrong: Thank you, I have nothing further. You may cross examine.

Cross-examination.

By Mr. Alexander:

Q. Lt. Armstrong, there was a lot of blood around that [fol. 892] chaise lounge?

A. There was, yes, sir.

Q. And on the chaise lounge?

A. Yes, sir.

Q. And on the person of Norma McCauley, is that right?

A. That is correct.

[fol. 893] Jeanne Pollard, called as a witness in behalf of the defendant, having been first duly sworn, was examined and testified as follows:

The Witness: My name is Jeanne Pollard.

The Clerk: Will you spell your last name, please.

The Witness: P-o-l-l-a-r-d.

The Court: Jean is J-e-an?

The Witness: J-e-a-n-n-e.

Mr. Armstrong: Will you keep your voice loud enough so that all of us can hear you and everybody in the jury can hear you? We all have to hear you and the reporter has to hear what you say so that he can write it down. Will [fol. 894] you please keep your voice up as much as possible.

Direct Examination.

By Mr. Armstrong:

Q. What is your business or occupation, Mrs. Pollard?
A. I am a waitress.
Q. How long have you been employed as a waitress?
A. Possibly nine years.
Q. Are you acquainted with the defendant, Mr. Crooker, in this case?
A. Yes, sir, I am.
Q. Did you know Norma McCauley during her lifetime?
A. Yes, I did.
Q. When was the first time you ever met Norma McCauley?
A. I met her, it was in the late fall of 1953.
Q. In the fall of 1953?
A. Yes.
Q. Then, since that time up until the time of her death how well did you have occasion to know her—how often did you see her?

Mr. Alexander: We will object to the first part of that.
[fol. 895] Mr. Armstrong: I will rephrase it.

Q. How often did you see her from the time you first met her in the fall months, after this fall of 1953?
A. Three or four times a month at least.
Q. Did you ever visit Norma McCauley in her home?
A. Yes, I did.
Q. When was that, approximately?
A. That was in the latter part of May of this year.
Q. The latter part of May of this year?
A. Yes.
Q. Between the fall of 1953 and the latter part of May, 1955, on the occasions that you have already testified to, you saw her pretty constant up to that time?
A. Yes, it was.
Q. Where was the place you first had occasion to see Mrs. McCauley?
A. That was at the Sapphire Room at Florence and Crenshaw in Los Angeles.
Q. A little louder, please.

A. That was at the Sapphire Room at Florence and Crenshaw in Los Angeles.

Q. On Florence and Crenshaw in Los Angeles?

[fol. 896] A. Yes.

Q. Florance is in the south part of Los Angeles?

A. Sure.

Q. Crenshaw is in the west part, so Florence and Crenshaw are in southwest Los Angeles?

A. Right.

Q. Were you employed at that time?

A. Yes, I was.

Q. What were your particular duties at that time?

A. I was a waitress there, combination waitress and hostess.

Q. You were a waitress and hostess at the Sapphire Club?

A. Yes, I was.

Q. On this first occasion that you saw Norma was she alone or with someone?

A. No, she was with John.

Q. She was with Mr. Crooker?

A. Yes.

Q. On a subsequent occasion that you saw her, where did you see her?

A. It was always at the Sapphire.

Q. At the Sapphire Club?

A. Yes.

Q. And was——

[fol. 897] A. I mean until the past year.

Q. I beg your pardon?

A. Until the past year.

Q. Directing your attention to those times, was she accompanied whenever she came in there?

A. Yes, she was always with Mr. Crooker.

Q. And did you ever see her during this first period of time, from the fall of 1953 until, oh, let's say, January of 1955, when she was not with Mr. Crooker?

A. Yes, I have seen her alone.

Q. Before January, 1955?

A. No, it was after that.

Q. From the fall of 1953 until January of 1955, each time you saw her she was with Mr. Crooker, is that right?

A. That's right.

Q. You say that was an average of about three times a month?

A. Yes, at least that.

Q. When you saw Mr. Crooker and Mrs. McCauley together here, what was the extent of their visit to the Sapphire Club?

Mr. Alexander: To which I object as incompetent, irrelevant and immaterial.

The Court: Objection sustained.

By Mr. Armstrong:

Q. On these occasions you have testified that you saw [fol. 898] Mrs. McCauley and became acquainted with her, would she stop into the place where you worked momentarily, or would she spend some time?

A. Well, when they would come in they would come in for the entire evening.

Q. Did they have a meal there?

A. No, no, they never had dinner.

Juryman David Scott: I can't hear her.

The Court: Keep your voice up so that the last gentleman can hear you.

Mr. Armstrong: Would you read the last answer?

(Record read.)

By Mr. Armstrong:

Q. Would you give us an estimate on the average how long they would spend in the Sapphire Club when they visited there?

A. Normally they would come in between 9:30 and 10:00 o'clock in the evening and they would stay until closing time or shortly before, which would be 2:00 o'clock in the morning.

Q. All right, then, during this—well, that was up until January, 1955. From January, 1955, on where did you see Norma McCauley?

A. I saw her at—my husband and I went into business with another gentleman, and the last time I saw them, that was in May—that was at the Piccador, 152nd and Figueroa, and they came for dinner and spent the entire evening there [fol. 899] with us that night.

Q. That place was called the Piccador?

A. That's right.

Q. Where was that?

A. 152nd and Figueroa.

Q. 152nd—152 would be 152 blocks south of First Street. That would be in the south part of town, is that right?

A. Yes.

[fol. 900] Q. They had dinner on this occasion. Well, now, between that time, between May and January did you see Mrs. McCauley in that interval of time, between January and May?

A. Yes, I did.

Q. On those occasions that you saw her was she alone or with Mr. Crooker?

A. She was with Mr. Crooker. Then I saw her alone, too, several times.

Q. And then in addition to the times that you saw her, without saying anything that was said, did you have occasion to have telephone conversations with Mrs. McCauley?

A. Quite a few.

Q. And when was the last time that you can recall that you had a telephone conversation with Mrs. McCauley?

A. That was in June.

Q. In June of this year?

A. June of this year.

Q. All right, and can you give us an approximate date and the time that you saw Mrs. McCauley and the defendant John Crooker together at the Piccador?

A. That would have been in May. It would have been the early part of May, I think.

Q. In the early part of May. All right. Now, during the time that you observed Mr. Crooker and Mrs. McCauley together, did you observe the demeanor or behavior of Mr. Crooker?

[fol. 901] A. Did I what?

Q. Did you observe how Mr. Crooker behaved, what his demeanor was?

A. Yes, that would be natural.

Q. What was your observation there?

Mr. Alexander: That is immaterial, if the Court please.

The Court: Objection sustained.

By Mr. Armstrong:

Q. Did you notice anything in Mr. Crooker's behavior that demonstrated an attitude toward Mrs. McCauley?

Mr. Alexander: That would be calling for a conclusion, if the Court please.

The Court: Sustained.

Mr. Armstrong: Did you notice anything in particular as respected Mr. Crooker's attitude toward Mrs. McCauley in the period of time that you observed them?

Mr. Alexander: That is immaterial, if the Court please.

The Court: Sustained.

Mr. Armstrong: Your Honor, to which I would like to make an offer of proof, if the Court please.

The Court: Approach the bench.

(The following proceedings were had at the bench and outside the hearing of the jury):

Mr. Armstrong: Your Honor, the anticipated answer to the question is that this witness observed that Mr. Crooker's [fol. 902] attitude towards Mrs. McCauley, on the occasion that he was with her, showed a great deal of affection towards Mrs. McCauley which was obvious to a casual observer.

The offer of proof as to materiality is to show that this defendant's attitude toward the victim, at the time that was observed by this witness, was such as would be material in absence of motive, for wanting to cause her death; to show that he regarded her with a great deal of affection, and I believe that this witness, without stating any conclusions of hers, can testify as to behavior which she observed, which is something that is in the nature of a common, everyday observance, and on that basis I would urge the Court to consider the materiality of the status of the defendant with the decedent, as can only be reported by the defendant, himself, or people who observed them together.

Mr. Alexander: To which we will renew our objection, if the Court please. It is incompetent, irrelevant, and immaterial. It does not prove nor disprove any of the facts in issue in this case, and it is obviously calling for conclusions on the part of this witness.

The Court: I will overrule the objection. You may answer.

Mr. Armstrong: Thank you, your Honor.

(The following proceedings were had in open court and in the hearing of the jury:)

[fol. 903] Mr. Armstrong: Will you read the pending question, please, Mr. Reporter?

(Whereupon the reporter read the following question: "Q. Did you notice anything in particular as respected of time that you observed them?")

Mr. Crooker's attitude toward Mrs. McCauley in the period

By Mr. Armstrong:

Q. You may answer.
A. Yes, I did.
Q. What did you observe?
A. On first meeting them——

The Court: (Interrupting) Just what did you observe? What did you see?

A. That Mr. Crooker was very affectionate toward Norma McCauley. The only way I can describe it, he treated her like she was a China doll, or something like that.

Mr. Armstrong: You may cross examine.

Cross-examination.

By Mr. Alexander:

Q. You say that you first saw them together in the fall of '53?
A. That's right.
Q. And that from time to time you did see them, up to sometime in May, 1955, is that right?
A. That's right.
Q. And the last time you saw them together was the early [fol. 904] part of May of 1955?
A. Yes.
Q. Now during that entire period, from the Fall of '53 to May, '55, did you see Crooker with any other woman in that place?
A. No, I never did.

Q. Did you see Norma McCauley with any other man?

A. No.

Q. Now after the early part of May, 1955, did you see Norma McCauley alone?

A. After?

Q. Yes.

A. Yes, I did.

Q. And where was this?

A. This was at her home.

Q. And after May, 1955, did you see the defendant, Crooker, alone?

A. No.

Q. Never saw him again after that?

A. No.

Q. Now I noticed that you referred to him as John. Did you know him before the Fall of 1953?

A. No. I met the two of them together.

Q. At that time you were working as a waitress, is that correct?

A. Yes.

[fol. 905] Q. Now, to whom did you first tell this story you have told this jury today?

A. To whom did I tell it?

Q. Yes.

A. Well, I haven't discussed it with anyone.

Q. You have not discussed with anyone the relationship that you saw between Crooker and Norma McCauley?

A. Yes, I did. I am sorry. Mrs. Shirley Adams is a very close friend of mine.

Q. And she is the only one you told about this?

A. Yes. She has had conversations with Mr. Crooker and Mrs. McCauley, too.

Q. I asked you if she is the only one to whom you told——

A. (Interrupting) That I can recall now, yes.

Q. You never told it to Mr. Armstrong?

A. I was questioned by Mr. Armstrong.

Q. And when was this?

A. Well, I believe—I can't remember exactly, but I believe it was sometime last month that I was first contacted.

Q. In October?

A. I don't know whether it was October or November.

Q. And that is the only time that you were contacted by Mr. Armstrong or anybody else pertaining to your testimony?

A. That's right.

Mr. Alexander: Nothing further.

[fol. 906] Re-direct Examination.

By Mr. Armstrong:

Q. Now you said that you never saw the defendant, John, alone after May, '55, is that right?

A. I never did see Mr. Crooker alone.

Q. And you didn't see him at all, either alone or with anybody after May, 1955?

A. No.

Q. Did you have occasion—without saying what was said—did you have telephone conversations with Mr. Crooker after that?

A. Yes, I did.

Q. Specifically, again, without saying what was said, did you have any conversations where both Mr. Crooker and Mrs. McCauley were on the same extension telephone talking to you?

A. Together?

Q. Yes.

A. Yes.

Mr. Armstrong: That is all. Thank you.

Mr. Alexander: I have nothing further.

The Court: That is all.

Mr. Alexander: Just one more question.

Re-cross Examination.

By Mr. Alexander:

Q. When did this telephone conversation occur that the [fol. 907] three of you were on together at different extensions?

A. This was in May.

Q. The early part or the latter part of May?

A. It was the early part of May.

Q. Did you put the call in?
A. No.
Q. You were called by someone?
A. Yes.
Q. And who was that?
A. Mr. Crooker.

Mr. Alexander: That is all.

Mr. Armstrong: That is all. Thank you. May the witness be excused?

The Court: Yes, you may be excused.

Mr. Armstrong: The defense will call Sgt. Gotch.

The Court: You are calling him as your witness?

Mr. Armstrong: Yes, your Honor.

JACK GOTCH, called as a witness on behalf of the defendant, having been previously sworn, was examined and testified further as follows:

The Court: You have already been sworn. State your name again.

The Witness: Jack Gotch, G-o-t-c-h.

[fol. 908] Direct Examination.

By Mr. Armstrong:

Q. Sgt. Gotch, I will direct your attention to People's Exhibit 23 in evidence, and ask you to look at this for a moment, and to refresh you, the red markings here have been made by defense counsel, at the direction of Inspector Kerr. D-4 indicates the main entrance. D-1 indicates Purdue Avenue. D-2 indicates the driveway. D-3 indicates the north arrow pointing in this direction (indicating), and D-5 indicates the side entrance.

Now I will ask you, as to this drawing, as corrected, based on your knowledge of the West Los Angeles Police Station, does this drawing, with the additions, reflect to you an accurate portrayal of the premises there on Purdue Avenue.

A. Yes, it does.

Q. And I will ask you if—as far as the interior is concerned—with respect to Purdue, with respect to the drive-

way, is this reception office that is indicated here where the reception office actually is, in the police station?

In other words, with respect to the other rooms and so forth, is that its proper position with respect to the other rooms portrayed?

A. Yes.

Q. And the Commander's office is in this position (indicat-
[fol. 909] ing) as compared to the reception office and the squad room?

A. Yes.

Q. And the squad rooms are in their proper positions with respect to the reception office and the commander's office, is that right?

A. Yes.

Q. Now is there another reception office elsewhere on this floor of the building, on the second floor of the building?

A. Yes, there is——

Q. (Interrupting) Would you indicate—go ahead, finish your answer.

A. The entire floor consists of the detective bureau, which is noted here (indicating). Over on this side (indicating) is the traffic bureau, which has their own offices. To the north is the Juvenile Bureau, where they have their offices. I think it consists of two additional offices similar to these (indicating), and they naturally have an entrance there, and the roll call room is to the back of the entire floor there.

Q. By "to the back" you mean——

A. (Interrupting) I mean north. It would be the northwest corner of the building.

Q. All right. Now, you have identified these other bureaus that conduct their business on the second floor of the West Los Angeles police station.

[fol. 910] Is there a room designated particularly as a general reception room, a waiting room for any and all of these different bureaus that work there?

A. No, sir. Anybody that has business with the detective bureau comes in here (indicating), and it is handled here (indicating). Anybody that has traffic problems go to traffic, and anybody that has juvenile problems goes to juvenile. It is all handled within the respective offices.

Q. By the way, how long have you been a member of the police department?

A. I was appointed in April, 1942. It will be approximately thirteen and a half years, fourteen years.

Q. How long have you been assigned to West L. A.?

[fol. 911] A. I have been assigned to West L. A. since January of this year, 1955.

Q. Now, in your experience in the West Los Angeles Police Department, have you had occasion to note the presence of people that are newspaper reporters, commonly known as police reporters or police photographers in the premises there?

A. I have noticed them in every division I have worked in.

Q. Well, particularly since January, since you have been in West Los Angeles, have you noticed them there?

A. Yes, sir, every day, I would say.

Q. In this particular case, while you were investigating it and while the interrogation was going on with Mr. Crooker, you observed members of the press around West Los Angeles, did you?

A. I did.

Q. And on previous cases, in a similar fashion, members of the press have been in the area, is that right?

A. Yes, sir.

Q. All right. Now, from your experience and the observations that you have made in the past, is there a place where the members of the press generally wait for news from police officers or to get information for their papers?

[fol. 912] A. No.

Q. Well, from your experience in the past, and from the observations that you have made, have you noticed in the past that police reporters are more often in one particular section of the building than in another?

Mr. Alexander: That is immaterial, if the Court please.

The Court: Objection sustained.

By Mr. Armstrong:

Q. As far as the Detective Bureau is concerned, have you noticed that it is the custom of the police reporters that are waiting for information to wait in the reception room that is indicated on People's Exhibit 23?

A. Well, there is no set rule where they would wait.

Q. Regardless of rules, have you noticed what the custom has been?

A. Well, the custom is that if possible they would be right in with the officers and the suspect, but they usually—I request that they wait out in the reception room.

Q. Which is the reception room indicated here (indicating)?

A. Yes, right here (indicating). They are kept in this [fol. 913] area here (indicating).

Q. Indicating to the north of the counter, as the corrected directional arrow, or to the west of the counter by the original directional arrow, is that right?

A. Yes.

Q. In the room marked "Reception Room"?

A. Yes.

Q. Now, when you were interrogating the defendant, did he at any time, prior to midnight of the midnight that separated the 5th and 6th of July, tell you some place that he had been on July 4th?

A. He told me that—during one of the conversations, I don't recall which, he told me that he had been driving on the Coast Highway.

Q. Did he say any more than driving on the Coast Highway? Did he say he had been to the beach?

A. No. He said he took a drive down the Coast Highway. That was his explanation as to how he had injured his hand.

Q. I see. During this questioning of him, did you observe the back of the defendant's neck being sunburned?

A. No, I didn't observe any sunburn.

Q. Would it be—is your answer that you don't recall it or that it wasn't sunburned?

[fol. 914] A. To the best of my recollection, I would say I don't recall it being sunburned.

Q. Did you notice any other—did the defendant—Strike that.

Did the defendant have the general appearance of being sunburned?

A. No, he didn't appear that way to me.

Q. Sgt. Gotch, I will show you a picture that has been marked Defendant's Exhibit A in evidence. I believe you previously identified this picture as being one of those taken under your direction, is that not right?

A. Yes, sir.

Q. Now, I will direct your attention particularly to what appear to be some stains up here on the curtains, and I will ask you about this.

A. Yes, sir.

Q. Did you observe those at the time the pictures were taken?

A. Yes, sir.

Q. And subsequently?

A. Yes, sir.

Q. From your experience as a police officer in connection with your investigation of this case, did you form an opinion as to what those stains were?

A. I am not an expert on that line but I have my own [fol. 915] opinion.

Q. What was your opinion?

A. My opinion is that after——

Q. Did you form an opinion as to what these stains were?

A. I formed the opinion that they were blood.

Q. In the course of your investigation of this case did you make any detailed or scientific examination of any of these stains?

A. No, sir.

Q. And while you were connected with the investigation of this case did any other officer or any other person under your direction and control make such an examination?

A. I do not know.

Q. But as far as your direction is concerned——

A. I didn't ask that it be done.

Q. You did not direct it?

A. No, sir.

Q. And to your knowledge, anticipating your next answer, did you observe it being done by anybody while you were on the premises?

A. No, sir.

Q. With respect to these chairs, this one chair that has the wrought iron legs to it—we can see it better in another picture—did you notice any stains on any part of that [fol. 916] chair?

A. Yes, sir.

Q. In your opinion as a police officer and in connection with the observation that you made in this case, did you form an opinion as to what those stains were?

A. Yes, sir, they were two or three drops of blood on that chair.

Q. There were blood stains on that chair?

A. Yes, sir.

Q. In addition to the blood stains you observed on the chair and curtains and the blood you observed on the chaise lounge, do you recall seeing any other blood stains on any other article in the room?

A. I don't recall at this time whether there was or not. There should have been due to the amount of blood there, but I can't say just where they were right now. I don't recall that.

Q. You don't have any definite recollection?

A. I don't recall whether there were any on—if there were any, where they were.

Q. When you came on this scene, Officer Gotch, in the bedroom, did you observe whether or not there were cigarette butts in any container, such as an ashtray or anything like that in Mrs. McCauley's bedroom?

A. I don't recall of my own knowledge whether there [fol. 917] were or not at the time we went in; perhaps I can explain it—I probably wasn't looking for it and that is why I didn't notice it at that time.

Q. I see. Did you subsequently, while making an examination of the room, notice it?

A. No, I did not.

Q. Or any other time, did you notice the presence of cigarette butts in the room?

A. No, sir. I know there must have been some there. Whether they were from the officers smoking or from someone who had been there, I don't know. It figures there should have been some there.

Q. As a matter of fact, Sgt. Gotch, while investigating a case like this it is your practice, is it not, as a police officer, not to touch anything in the room?

A. It is.

Mr. Alexander: That is immaterial—all right, go ahead.

By Mr. Armstrong:

Q. Would it further be your practice not to place anything in the room that was not there at the time you came in, even a cigarette butt?

A. That is a practice, but sometimes it is not followed right to the letter.

Mr. Armstrong: I have nothing further.

[fol. 918] Cross-examination.

By Mr. Alexander:

Q. Sgt. Gotch, at my request did you go to that police building at noontime today and look for ledges?

A. Yes, sir.

Q Did you find any?

A. Yes, sir.

Q. Where were they?

A. There were ledges outside the front step as designated there. There were ledges underneath the windows——

The Court: Do you want to point it out with the ruler?

The Witness: Yes, sir (indicating on diagram). There were these two ledges here. May I refer to my notes?

The Court: You may—these notes were made this noon?

A. Yes, sir. There were four steps leading up to the station. This is on the first floor, and on each side of the steps were ledges. The ledges were two and a half feet wide and four feet long. From this ledge to this window is eighteen and a half feet. From this window to the end of the building is eleven feet.

The Court: When you say "this window" you are talking about the north window in the Commander's office?

[fol. 919] A. Yes, sir. And there were corresponding windows on the first floor. On the first floor there is a ledge four and a half inches wide and three *foot* off the ground, and then there is another ledge which forms a windowsill, which is eight and a half inches wide, five feet off the ground.

By Mr. Armstrong:

Q. Will you indicate where you are pointing; where you are indicating this particular thing you just described?

A. Well, these ledges follow a pattern all around the building, under each window in the building there are ledges, and I imagine it is more for decoration than as a ledge.

By Mr. Alexander:

Q. Sgt. Gotch, when you arrived at the McCauley residence there was a great deal of blood on the body of Norma McCauley, was there not?

A. Yes, sir.

Q. And a great deal of blood on the chaise lounge?

A. Yes, sir.

Q. And in the immediate vicinity?

A. Yes, sir.

Q. Sergeant, you said you did not cause an examination to be made of the blood that appear- on the drapes; can you tell us why not?

A. It was obvious where it came from, in my opinion.

[fol. 920] Mr. Armstrong: I object to that as being a conclusion of the witness and ask to strike it out, the part of the answer, "it was obvious where it came from."

The Court: Yes, objection sustained. That may be stricken out.

By Mr. Alexander:

Q. Did you form an opinion as to where it came from?

A. I did.

Q. What was that opinion?

Mr. Armstrong: Objected to as being without proper foundation.

The Court: Sustained.

By Mr. Alexander:

Q. Will you give us your reasons why you formed the opinion that you did?

A. The reason I formed the opinion regarding the blood on the drapes was due to the way the body was, the amount

of blood in the room, and the amount of blood around the immediate area.

Q. And it was based upon those matters, and that is why you thought it was not important to have an examination of that blood on the drapes, is that right?

A. That is correct.

Q. How about the chair; you did not have the blood on the chair examined, did you?

A. No, sir.

[fol. 921] Q. The wrought iron chair, or any other chair, is that right?

A. That is correct.

Q. You did that for the same reason you have already told us?

A. That is correct.

Q. Was any blood that you know of from that bedroom analyzed?

A. Not that I know of.

Mr. Alexander: I have nothing further.

Re-direct examination.

By Mr. Armstrong:

Q. Now, Sgt. Gotch, with respect to this building, let me ask you if there is any physical part of this building that will fit the description of the words which I am going to say to you, except what has been marked before: "The steps go right down between the ledges, and the ledges run on each side of the steps going into the station."

Now, as far as that description is concerned, is there any appurtenance to that building about which those words could be said?

A. No, sir.

Q. In other words, D-4 is the only ledge of that type with steps in the middle?

[fol. 922] A. Yes, sir.

Mr. Armstrong: All right, that's all.

Mr. Alexander: Nothing further.

The Court: That's all.

(Witness leaves stand.)

Mr. Armstrong: Your Honor, I have a witness from the Los Angeles Police Department that promised to be here at 3:00 o'clock. We might make inquiry—Capt. Stilson? Perhaps he is here already, if the Bailiff will inquire.

The Court: He is not here.

Mr. Armstrong: It is my error because I asked him to be here at 3:00 o'clock.

The Court: Do you have any other witnesses available?

Mr. Armstrong: I do not. Could we recess until that time?

The Court: All right, we will take the afternoon recess. Ladies and gentlemen of the jury, do not discuss the case among yourselves nor talk to anyone about it, nor allow anyone to talk to you about it. Do not form nor express any opinions or conclusions about the case until the matter is finally submitted to you.

(Short recess.)

[fol. 923] The Court: The jury is present. Your next witness, Mr. Armstrong?

Mr. Armstrong: May I have just a moment? May I approach the bench—off the record?

The Court: Counsel.

(Conference at bench outside of hearing of jury and court reporter, off the record.)

Whereupon the following proceedings were had in open court before the jury:)

The Court: Your next witness?

Mr. Armstrong: Capt. Stilson.

Capt. Warren M. Stilson, called as a witness in behalf of the defendant, having been first duly sworn, was examined and testified as follows:

The Clerk: Be seated and state your name, please.

The Witness: Warren M. Stilson.

The Clerk: How do you spell your last name?

The Witness: S-t-i-l-s-o-n.

Direct Examination.

By Mr. Armstrong:

Q. Mr. Stilson, what is your business or occupation, please?

A. Member of the Police Department, City of Los [fol. 924] Angeles.

Q. How long have you been a member of the Police Department, City of Los Angeles?

A. 32 years.

Q. And what is your rank with the Los Angeles Police Department?

A. I am a Captain.

Q. What are your particular duties in the Los Angeles Police Department?

A. I am in charge of the Crime Investigation Division.

Q. Crime Investigation Division of the Police Department functions in what way?

A. Well;——.

Q. What is the business of the Crime Investigation Division other than what the name implies?

A. It assists investigators in any scientific investigation, any scientific matters or problems that come within their investigation.

Q. I see. And you have in your department experts in his particular type of work?

A. Yes, sir.

Q. You have chemists working for you?

A. Yes, sir.

Q. What other specialists other than chemists do you have?

[fol. 925] A. We have ballistics experts, sound recording experts, polygraph experts, fingerprint experts and photographers.

Q. We have heard here in this courtroom, Captain, most of the officers identify themselves as being attached to West Los Angeles, am I correct in the assumption that your department is not attached to a particular branch of the police department?

A. Well, it is citywide in its scope.

[fol. 926] Q. That is, if West Los Angeles wants you, you are available to West Los Angeles?

A. Yes, sir.

Q. If Hollywood wants you, you are available there?

A. Yes, sir.

Q. If Central needs you, you are available to Central?

A. Yes, sir.

Q. You work in assisting the particular department that is making the investigation?

A. That is correct.

Q. Directing your attention to the particular case we have here, have you seen Mr. Crooker before today?

A. Yes, sir.

Q. And in connection with Mr. Crooker, did you have occasion to go to the home of Norma McCauley at 1100 Somera Road?

A. Yes, sir.

Q. Did you have occasion to go to the apartment of Mr. Crooker?

A. Yes, sir.

Q. That is 5128 Marathon, Hollywood?

A. That is correct.

Q. All right, now, directing your attention to the home of Norma McCauley, I will show you on the board a diagram that has been identified as People's Exhibit Number 9 [fol. 927] in evidence, and explain to you so that you may be oriented, that this is the Somera Road up here on top, and this is the drive-way going into the garage, and this is the living area, and back here are the bedrooms, nursery, maid's room—are you generally familiar with those premises?

A. Yes, sir.

Q. And which part of the house were you in—strike that out, please. Were you in this house on or about the 5th of July?

A. I was.

Q. Which part of the house did you concern yourself principally with?

A. Principally the bedroom.

Q. And by "bedroom" you are indicating this where it is marked "bedroom" rather than this where it is marked "nursery", is that right?

A. Yes, sir.

Q. Can you tell me the approximate time of the day that you arrived there?

A. I imagine it was around 11:00 o'clock, sometime before noon.

Q. In the morning?

A. Yes, sir.

Q. At the time you arrived there, was the body of the woman identified as Norma McCauley still in the room?

A. Yes, sir.

[fol. 928] Q. Would you describe for us its approximate position at the time you arrived?

A. As I recall, she was partially in a chair. Her body was lying partially reclined in a chair.

Q. By "chair", Captain, would it refresh your recollection if I referred to a chaise lounge?

A. Well——

Q. That type of chair?

A. Yes, sir.

Q. I see. Did you cause photographs to be made at that time?

A. Well, I didn't exactly cause photographs to be made. The photographers were called to the scene, and they were making them.

Q. Those are men in your section?

A. Yes, sir.

Q. And they made photographs directed by the other officers?

A. Yes, sir.

Q. Was that the idea, Mr. Gotch here——

A. (Interrupting) Our whole division is for service to the investigating units handling a crime.

Q. If someone under your command comes there, you make your command available to the particular officers investigating?

A. Yes.

Q. In this case, would Sgt. Gotch direct your men to take [fol. 929] pictures?

A. Yes. We take pictures if he wanted them taken.

Q. Now I will direct your attention to People's Exhibit 12 in evidence, and ask you if that is an accurate representa-

tion of the scene that you saw on that occasion (showing same to witness).

A. (Examining same.) As near as I can recollect, yes.

Q. I will also ask you to look at People's Exhibit 14, and ask you the same question. Does that seem to you to be an accurate portrayal of what you saw there on the scene (showing same to witness)?

A. (Examining same.) It does, yes, sir.

Q. Then I will direct your attention to Defendant's Exhibit A in evidence, and ask you if that appears to you to be an accurate portrayal of what you saw on the 5th of July? (Showing same to witness.)

A. (Examining same.) It appears as it was, yes, sir.

Q. Now Captain, do you have anyone—did you have anyone on the scene there in your company, from your department, who was, by occupation, a chemist, or by particular qualifications a chemist?

A. Yes, sir.

Q. And who was that person?

A. Mr. Ray Pinker is chief chemist.

Q. And did you go there with Mr. Pinker?

[fol. 930] A. I did.

Q. What is Mr. Pinker's rank in the police department?

A. He is a chief forensic chemist, or a chief criminologist, rather. The correct name is chief criminologist of the police department. He is a civilian employee.

Q. But he does work in your department under your direction and administration?

A. Yes, sir.

Q. And how long were you in the McCauley bedroom, approximately?

A. Oh, I imagine we were there probably half, three-quarters of an hour.

Q. And all the time you were there, was Mr. Pinker also present?

A. Yes, sir.

Q. All right. During the time you were in the room, did you observe Mr.—strike that. While you were in the room, did you notice what appeared in these photographs to be stains on these drapes up here (indicating)?

A. Yes, sir.

Q. And you see these stains particularly in defendant's exhibit A, the stains that appear on the drapes?

A. Yes.

Q. And from your work in the crime lab of the Los Angeles Police Department, and your experience and your observations in this case, did you form an opinion as to [fol. 931] what those stains were?

A. Well, they appeared to be blood.

Q. Your opinion was that they were blood stains?

A. Yes, sir.

Q. And during the time that—of this half to three-quarters of an hour that you were in the McCauley bedroom, did Mr. Pinker, in your presence, make a detailed analysis of any kind of these stains?

A. No, sir.

Q. And did you direct Mr. Pinker to make such an examination?

A. No, sir.

Q. Either at that particular time or at a subsequent or earlier time?

A. I did not.

Q. At no time did you order such an examination made?

A. No, sir. He may have made the examination. I don't know. If the detectives requested it, he could have made it later.

Q. I see, but to your knowledge, as far as your observation was concerned, or your own request was concerned, you don't know of his having made such an examination?

A. No, sir.

Q. Now later that day—you said you were there on the 5th. You got there about eleven, and you were there half, three-quarters of an hour?

[fol. 932] A. As far as I remember, maybe longer, maybe less.

Q. Sure, but later that same day did you go to the defendant's home on Marathon in Hollywood?

A. Yes, sir.

Q. And at the time that you went to the defendant's home, did you go alone or were you still with Mr. Pinker?

A. I was with Mr. Pinker.

Q. You and he traveled together in the same automobile?

A. We did.

Q. And you arrived there together?

A. Yes.

Q. And went inside the house together?

A. Yes.

Q. At the time you were there, who else was present when you arrived at Mr. Crooker's apartment?

A. Detectives Gotch and Stambler I believe were there when we arrived.

Q. I see, and were those the only police officers present?

A. I believe so.

Q. All right, and was the defendant, Mr. Crooker—was he there?

A. Yes, sir.

Q. All right. When you and Mr. Pinker arrived at the apartment of the defendant, what did you then do?

[fol. 933] A. We assisted in a search of the premises, the occupant's clothes, and looked them over thoroughly for blood stains.

Q. All right. Now, would you tell us what you did in this examination? You say you looked them over thoroughly. How thoroughly did you examine them? How did you do it?

A. Well, we took them off the hangers and looked each suit over one by one, each piece of clothing over one by one for any stains.

Q. And you examined them minutely, is that correct?

A. Yes, sir.

Q. And you say that you examined the clothes on the hanger in the closet, is that right?

A. Yes, sir.

Q. As far as the clothes are concerned, you examined those. Was there any other clothes that you examined, other than the ones that were hanging on a hanger in the closet?

A. We examined any clothing that was in the apartment.

Q. In other words, you looked in bureau drawers?

A. Yes.

Q. Laundry hamper?

A. Yes.

Q. Laundry bag, any place you could find some clothing you examined it?

A. We did.

Q. And in making this search did you confine your search [fol. 934] to the living room—bedroom of the apartment, or did you go through the entire apartment?

A. That is about all there was to the apartment, but a kitchen.

Q. What about the bathroom? Did you you examine that, too?

A. We looked in there.

Q. You searched in there?

A. Yes, sir.

Q. In any place in the defendant's apartment, did you find any clothing or any piece of material of any kind that had any blood stains on it?

A. Not to my knowledge, no, sir.

Q. And were you looking for anything else besides blood stains?

A. We were looking for any sharp weapon that might have been used in the crime that we had come from.

Q. What was the result of that search?

A. We found nothing that we were able to connect with the crime.

Q. I see. Were you also—at the time of this search were you also watching for any keys?

A. Yes.

Q. Did you find any keys, other than the ones that fit the locks on the defendant's automobile or house?

A. No, sir.

[fol. 935] Q. All right. Now, in addition to this search that you have explained to us, did you do anything else while you were in the defendant's apartment? When I say "you", I refer to your department, you and Mr. Pinker, in your presence?

A. I don't recall any particular other thing that we did.

Q. While you were in Mrs. McCauley's bedroom—go back a moment—did you or did Mr. Pinker or anyone else on your staff in your presence examine the fingernails of the deceased woman?

A. I don't remember.

Q. That is to say, to your knowledge or under your supervision or direction or control, was there any fingernail scrapings taken of any kind?

A. Not to my knowledge.

Q. And not according to your direction, then, I assume?

A. No, sir.

Q. Then going back to the defendant's apartment again, as far as the defendant's physical person was concerned, was any examination made of the defendant's physical person by you and Mr. Pinker?

A. Yes, sir.

Q. And what did that examination consist of?

A. He had an obvious scratch or wound of some kind on his hand that he was questioned about. He stated that [fol. 936] as near as I can remember—that he had assisted someone in disentangling an automobile from another automobile that had been connected by the bumpers or something. He had injured his hand.

There was some obvious scratches on his face, on his neck, as I remember. I am not sure which side it was. He stated that as far as he knew there was no scratches there, that if they were there, he didn't know how they got there, or didn't know they were there.

Q. Do you remember if during the time of this question and answer that you have just told us, if the defendant asked you if he could look in a mirror to see what you were talking about?

A. I am not sure. He might have. I don't especially remember it.

Q. In any event, in addition to the examination of the scratch on the defendant's neck, you say—I believe you said scratches on his face. Did you notice——

A. (Interrupting) On one side, I think below his chin in the neck area.

Q. There was more than one abrasion that you noticed?

A. One or two, yes, sir.

Q. I see, and other than this examination of any abrasions that you saw on his hands and on his face, did you make any further examination of the defendant?

A. No, sir.

[fol. 937] Q. Did you, or anyone under your direction and control, or in your presence, take any sample of the defendant's blood?

A. No, sir.

Q. Did you, or did anyone under your direction or control, or in your presence, take a scraping to take a sample of the defendant's tissue or skin?

A. Not that I know of.

Q. Now Captain, directing your attention again to the scratch that you observed—the scratches that you observed on the defendant's face, I wonder if you could give us some description of the type—what size of scratch did you observe, and what kind of a scratch did it appear to you to be, that you could observe?

A. Well, they were red—reddened the skin, and looked almost as though—at the time it would have been enough to bleed. I am not sure whether they would have bled or not, but they were obvious.

Q. Were these scratches of a size one larger than the other, or what were they like as best you recall?

A. It seems to me that one predominated. There was one larger than the others, and there might have been two or three other scratches along the general direction of the one.

Q. To the best of your recollection, that was the one Captain, to the best of your recollection the one you say [fol. 938] which occurs to you, it seems there was the one, in thinking back?

A. This is nearly six months ago, and my recollection—

Q. I realize that you are giving us your best recollection, and you are doing the best you can to recall, and that is all we want from you. If you don't remember, please just say so, as to the scratch appearing larger than the other. Did you notice anything about its course on the defendant's neck or face, or its shape, or anything unusual about it?

A. It seems to me it kind of curled rather than be a straight mark. It was curled; I am not positive, but to the best of my recollection it was.

Q. Counsel, from your experience in the strike that out, please.

I will show you here a photograph that has been marked People's Exhibit Number 22 for identification—it is in evidence, People's Exhibit Number 22 in evidence, and ask you as to the size and general shape, if that is about as you remember it?

A. It is about the way I remember it.

Q. The way the mark appears——

Mr. Alexander: Do we have an answer to the question?

Mr. Armstrong: He said that is about the way he remembers it.

The Court: Would you read the answer?

[fol. 939] (Answer read.)

By Mr. Armstrong:

Q. Captain, from your experience in crime investigation generally, and from your observation of this particular defendant and the particular abrasion that you observed, were you able to form an opinion as to the causation of this type of abrasion?

A. Well, the man stated he thought ——

The Court: Just a minute; read the question.

(Question read.)

By Mr. Armstrong:

Q. You can answer that yes or no, if you will, Captain, as to whether you were able to form an opinion.

A. Yes, I think so.

Q. All right, did you on that occasion form an opinion as to the causation?

A. I did, yes, sir.

Q. What was your opinion, Captain?

A. My opinion was that it had been scratched by some means or other, by something other than a razor, as he advised that it had been.

Q. Now, Captain, again calling upon your experience in your field of criminal investigation and your investigation of crimes of violence upon the person, were you able to form any opinion as to the cause of the scratch, other than that it was that he had been scratched?

A. Well, I have seen other fingernail marks on skins [fol. 940] of people. It could have been made by fingernails, and it could have been made by someone else; but the circumstances, you draw it to my attention, you are asking me for an opinion, and under the circumstances it is my opinion it could have been made by means of a man's or woman's or somebody's fingernails.

Q. In other words, as an opinion, that would occur to you as one possibility, at least?

A. Yes, sir.

Q. Now Captain, in addition to your examination of the defendant's person, as you have described, and the examination of the, or the search of the premises that you have described, did you do anything else that day on the 5th of July while you were in the vicinity of the defendant's premises, or while you were inside the apartment?

A. I think that covers it very well.

Q. Now directing your attention to a day, or possibly two days later, within a near period of time from that occasion that we just talked about on the 5th of July, did you have occasion to again go to the vicinity of the defendant's apartment?

A. I did.

Q. Did you make some sort of search while you were there on the second occasion?

A. Not of his apartment.

Q. Did you make some sort of a search?

[fol. 941] A. Yes, sir.

Q. Do you remember when that was with respect to the examination or search, if I tell you that the day you were there first was the 5th of July?

A. As I recall that, as I remember when the subsequent investigation was, I think it was the next day.

Q. It would be the 6th, then?

A. Yes, sir.

Q. Would you describe the search that you made on that occasion?

A. Yes.

Q. Would you describe it, please?

A. This apartment house has an incinerator that burns supposedly burns up everything of refuse in the apartment house. I believe it is emptied once a week or once every two weeks, just before the trash is collected by the trash collector. The garbage, clothing, papers, tin cans, and everything is put in this incinerator and it is burned under terrific gas—there is a gas burner under which it is burned, under great heat.

[fol. 942] Q. Can you stop there just a moment? How did individual tenants deposit their refuse in this incinerator

were you able to observe from looking at the defendant's apartment?

A. I don't remember looking at that, but they dumped their material into a dump or into a chute that goes down into the incinerator; all the different tenants in the place, whether it is in the hall or in each individual apartment I am not sure.

Q. All right. Anyway, then, if you will go ahead—I interrupted when you said that this refuse was burned under terrific gas heat. Now, if you will continue from there.

A. This incinerator had been emptied. The ashes and the tin cans were separated from each other into cans. It was placed along the walk in the rear of this apartment house by some person who is hired by the landlady to do this work. And we were informed that the trash collector would be there shortly, and we were asked to go there by the investigators, the detectives, and make a search of that material.

Mr. Pinker and I, and I think two other men of my division went over there and made a personal search of all that material.

Q. Can you tell us again, Captain, how did you perform [fol. 943] this search?

A. It was a rather messy search. We had a small sieve and got an empty can and sifted each can of ashes through this sieve into the empty can. We were looking for a key or any of the keys that we could locate, and we were also looking for a knife of some description.

The heat was so intense in the burning of this, that most of the things of that kind were melted and destroyed. We found evidences of keys and other kinds of metal that were melted all out of shape.

Q. And as far as finding any keys——

A. As far as finding any identifiable keys or any knife or anything else in this investigation, there was none that was identifiable.

Q. You say as far as finding any keys identifiable or any knives or anything else in this investigation, what was the result of your search of this material?

A. It was negative.

Q. Were you also in this search concerned with any possible residue of clothing; were you looking for that as well?

A. Well, anything that would be of advantage, clothing or shoes; but the heat was so intense in this incinerator that anything of that kind, if it had been in there, had been destroyed. There was no evidence of any. We found maybe [fol. 944] a couple of pieces of sole of shoes, of several pair of shoes that were not identifiable in any way.

Q. Do you think from the observation you made there of the refuse that you examined, if a pair of trousers, let us say, had been burned, would you have had any evidence of metal parts, such as snaps, zippers, or anything of that nature?

A. We found many of those pieces of metal from those, distorted, and so forth, clothing that was not identifiable to any particular piece of clothing.

Q. Now, on that particular day did you make any other search?

A. We spent the whole day making that search. That is the only search we made.

Q. To go back just a moment, Captain, the day that—the time that you were in the defendant's apartment, or included in your search, did you make a search of the defendant's automobile?

A. I think we did look over the automobile, yes, sir.

Q. Do you recall specifically, either you or some one in your presence, asking the defendant for the keys to his automobile, asking him the location of it?

A. Someone did, yes, sir.

Q. And when you went into that automobile, do you [fol. 945] remember if, in addition to examining the automobile, you removed anything from it?

A. It seems to me that there was a long, lengthy poem of some kind that had been written, or a letter, in the form of a letter, some kind of poem or something; I am not sure whether it was removed or whether it was put back there.

Q. Directing your attention particularly to the glove compartment of the automobile, do you remember removing anything from that?

A. That is the only thing I remember of, the finding of this letter. What other articles were in there——

Q. Would it refresh your recollection to ask you about a Manila envelope; do you have any recollection of that?

A. I didn't take it, personally. I know that. Maybe Mr. Pinker or whoever else was with us out there in the automobile may have taken it.

Q. When you went to the automobile do you remember whether or not the car was locked, whether you needed anything to gain access to the car?

A. I don't remember.

Q. Do you recall whether or not the glove compartment was locked when you examined the interior of the car?

A. I don't remember that, either.

[fols. 946-979] Q. All right. In addition to the searches that you have indicated for us, Captain, and the examinations that you made at the McCauley home and the Crooker apartment and the Crooker automobile, and the trash, was there any other examination or search made by you or in your presence other than what you have detailed for us?

A. No, sir.

Q. That is the extent of it?

A. As far as I can remember, it is.

[fol. 980]. Howard D. Kelly, called as a witness in behalf of the defendant, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Armstrong:

Q. Mr. Kelly, what is your business or occupation?

A. I am a partner in the firm of Kelly-Holliday Photography, in Huntington Park, which does commercial and industrial photography.

Mr. Armstrong: At this time, your Honor, I would like [fol. 981] to mark certain photographs as defendant's exhibits, the first one as Defendant's Exhibit C, if I may.

The Court: That will be Defendant's C for identification.

Mr. Armstrong: And I have another photograph here which I would like to mark Defendant's D for identification.

The Court: Defendant's D for identification.

Mr. Armstrong: On the next photograph, if I may, mark that Defendant's E?

The Court: Defendant's E for identification.

[fol. 982] Mr. Armstrong: I have another photograph, if I may mark this Defendant's F for identification.

The Court: Defendant's F for identification.

Mr. Armstrong: I have another photograph, if I may mark this Defendant's G for identification.

The Court: Defendant's G for identification.

By Mr. Armstrong:

Q. Mr. Kelly, I will show you a photograph of a building, and ask you if you recognize this—first, do you recognize this photograph (showing same to witness)?

A. (Examining same) Yes, sir, I do. That is the West Los Angeles Police Station.

Q. I see, and do you know who took—who made this photograph?

A. Yes, I took the picture, myself.

Q. And when did you take this picture?

A. I took the picture between the hours of 10:30 and 11:30 last night.

Q. And what type of equipment did you use?

A. I used a four by five speed graphic press camera, with a regular four by five Pan B film and flash equipment on it.

Q. And does this picture represent the entire front of the building of the West Los Angeles Police Station?

A. This picture takes in the whole front of the West Los Angeles Police Station.

[fol. 983] Mr. Alexander: Counsel, if you care, we will give you a final stipulation. Say it, and we will stipulate to it, Counsel.

Mr. Armstrong: Just one more thing.

Q. Now, there is a person standing on this ledge next to the steps here (indicating). Do you recognize the person?

A. Yes.

Q. And who is the person?

A. It is yourself.

Q. And this picture was taken from what direction? What was the direction of your camera? You were aiming which way?

A. The camera would be on the east side of the street, facing west toward the front of the building.

Q. I will show you Exhibits D, E, F, and G, for identification, and ask you if you recognize all of these photographs?

(Showing same to witness.)

A. (Examining same.) Yes. They are all different views of the building—of the front of the building. They are different perspectives of the building, itself.

Q. These photographs were all made last night?

A. Yes.

Q. This D was taken from what direction?

A. It is looking west, directly into the entry-way to the building, itself.

[fol. 984] Q. And then as to defendant's E for identification, what was the direction that that picture was taken?

A. That was looking southwest towards the one end of the building, towards the south end of the building.

Q. And there appears to be a small frame building next door.

A. There is a residence building next door to the police department.

Q. That was as this picture portrays it, as you saw it on the premises last night?

A. Yes.

Q. Directing your attention to Defendant's F for identification, what does that portray?

A. It shows—looking northwest into the driveway at the police department, itself, and shows a corner of the residence building next to the police department, itself, there.

Q. All right, and then Defendant's E for identification. What does that portray?

A. It shows yourself standing underneath the window on the south end of the building, with the residence next to the police building, itself.

Q. And your direction was what?

A. Looking northwest.

Mr. Armstrong: Cross examine.

STIPULATION RE OFFERS IN EVIDENCE

Mr. Alexander: It is excellent photography. I stipulate [fol. 985] it may be offered in evidence without any question.

Mr. Armstrong: The defense will accept the stipulation.

The Court: They will be marked Defendant's C, D, E, F, and G, respectively, in evidence.

Mr. Armstrong: Thank you, Mr. Kelly. That is all.

I would like to recall Sgt. Gotch.

JACK GOTCH, recalled as a witness on behalf of the defendant, having been previously duly sworn, was examined and testified further as follows:

The Court: You have already been sworn; be seated and state your name once again.

The Witness: Jack Gotch—G-o-t-c-h.

Direct examination (Continued)

By Mr. Armstrong:

Q. Mr. Gotch, showing you this defendant's exhibit C for identification, I will ask you first if you recognize——

The Court: That is in evidence now.

Mr. Armstrong: Defendant's Exhibit C in evidence, rather—and I ask you if you recognize Defendant's Exhibit C, what it portrays?

A. I do.

Q. That is what?

A. The West Los Angeles Police Station.

[fol. 986] Q. I direct your attention to the front center of that building; is that an accurate portrayal of the entryway?

A. It is.

Q. That is the main entrance?

A. Yes, sir.

Q. Are you able to tell, if I ask you to compare People's Exhibit Number 23 and Defendant's Exhibit C in evidence, I will ask you if you are able from that picture to locate the room that is portrayed at the Commander's office from the outside?

A. I am.

Q. Would you indicate what that is, please?

A. This area right here.

Q. If you will just mark that.

A. (Marking on photograph.)

Q. If you will put "Commander's Office" right there along the margin, we will know what is indicated there.

I wonder, your Honor, if there would be any objection to marking this "Squad Room Number 1" and this "Number 2," and so identify it?

Mr. Alexander: No objection.

Mr. Armstrong: People's Exhibit 23—we will mark the first squad room to the north of the Commander's office as squad room number 1, and the second squad room to the north of the commander's office, we will encircle that and [fol. 987] call it "Squad Room Number 2".

The Court: Is there any number designation of those rooms, Sgt. Gotch?

The Witness: No; the one he has designated as one is the burglary squad room, and number two is the homicide auto detail squad room.

The Court: It won't confuse you or other witnesses if you refer to them by number?

A. No, sir, I don't believe so.

By Mr. Armstrong:

Q. On this picture from the outside of the picture, are you able to recognize here the squad room numbers which we have indicated here, which would be on the picture?

A. Yes, sir.

Q. If you will just draw a line from the top of the picture and designate that.

A. This is number one.

Q. Yes; if you are able to recognize number two, would you do the same thing there and indicate where it would be in that picture?

A. (Marking on photograph.)

Q. Now, Sgt. Gotch, I will direct your attention to Defendant's Exhibit F in evidence, and ask you if you recognize on that picture what it purports to portray?

A. I do.

Q. Can you identify that for us as far as the building is [fol. 988] concerned, the principal building is concerned?

A. I can.

Q. What is that?

A. It is the southeast corner of the West Los Angeles Police Station.

Q. In so far as the second floor is concerned, does the picture portray the location of Commander Armstrong's office?

A. Yes, sir.

Q. And which windows would be the windows looking into, or—if you are on the inside looking out from Commander Armstrong's office, which windows would they be?

A. All the windows look out.

Q. Yes, but which ones in this picture; there are windows on two floors.

A. The top window, the second floor, the office underneath that is the captain of the uniform division's office.

Q. This appears to be the corner and the windows are on the——

A. South side and east side of the building.

Q. All of those windows are in the Commander's office, is that right?

A. Yes, sir.

Q. Adjacent to the building there appears to be a driveway. Where does that driveway go?

[fol. 989] A. The entire building, there is a driveway on the north side of the building and a driveway on the south side of the building. The north side is the entrance and goes to the rear of the building, to the garage where they have the gasoline and the repairs, and the exit is shown on this Exhibit F. This shows the exit from the garage area of the station.

Q. Now the driveway that is portrayed there, does that driveway correspond to D-2 on People's Exhibit Number 23 in evidence, where the driveway is marked here?

A. Yes, sir.

Q. So that the driveway on the photograph, the driveway marked D-2 on the sketch are the same driveways, is that right?

A. Yes, sir.

Q. Directing your attention to Defendant's Exhibit E in evidence, I will ask you if you recognize what that portrays?

A. I do.

Q. As to the Commander's office and squad rooms 1 and 2 as designated, do they appear in that picture?

A. They do.

Q. They would appear in what appears the second story of this building?

A. They do.

Q. With the Commander's office in the corner, and squad [fol. 990] room 1 and squad room 2 next on down?

A. Yes, sir.

Q. There appears to be a smaller building in the far left hand side of Defendant's Exhibit E; can you tell me what that is?

A. That is a private residence.

Q. That residence also shows in defendant's exhibit F, is that true?

A. Yes, sir.

Q. And it also shows in Defendant's Exhibit G?

A. Yes, sir.

Q. Directing your attention to Defendant's Exhibit G, does that show the windows into Commander Armstrong's office?

A. It does, and also shows the windows into the reception room.

[fols. 991-1050] Q. And on Defendant's Exhibit G, the window to the left is the window that would be in the reception room?

A. Yes, sir.

Q. That is the same reception room that we have here on People's Exhibit No. 23, marked here?

A. Yes, sir.

Q. The window that shows in the photograph is the same in the window that is in this position marked "Window" out of the reception office?

A. Yes, sir.

Q. Indicating the south window, the only window that is shown here?

A. That would be on the south side.

Q. And what is marked "Reception office"?

A. Yes, sir.

[fol. 1051] GEORGE A. FOX, called as a witness on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

The Clerk: Be seated and state your name, please.
The Witness: George A. Fox.

Direct examination.

By Mr. Armstrong:

Q. Where do you live, Mr. Fox?
A. 2032 North Las Palmas, Hollywood, California.
Q. What is your business or occupation?
A. I am a technical sales representative.
Q. Technical sales representative for whom?
A. For Turko Products, Inc. of Los Angeles.
Q. Were you acquainted with Norma McCauley during her lifetime?
A. Yes, I was; I had known Norma about eight or nine months prior to this accident.
[fol. 1052] Q. What had been the basis of your acquaintanceship with Mrs. McCauley?
A. I had met her through John Baird. John Baird was dating her, and I believe I met her first at the Thompson residence during a party that we had there. And that is the only time I have even seen Norma, was when she was with John Baird.
Q. That was on more than one occasion?
A. That was exactly three occasions.
Q. Three occasions?
A. Yes.
Q. On any of those occasions did you go to the McCauley home on Somera?
A. On two occasions — excuse me, I want to cancel that — not the McCauley home, the Thompson residence. I have never been at the McCauley residence.
Q. Directing your attention to the evening of the date of —or, more properly, the afternoon of July 4th of this year——
A. Yes.
Q. —where were you on the afternoon of July 4th?
A. In the afternoon at approximately 3:00 p.m. we left my apartment with my roommate, Bob Block, picked up by

John Baird in his automobile, and we drove out to Bob Block's date's house, Pat. From there we drove directly to the Thompsons, the four of us, John Baird, myself, Bob [fol. 1053] Block and his date. We arrived at the Thompson residence, and Norma was not there. We were the first to arrive.

Q. What time did Mrs. McCauley arrive?

A. She arrived later in the afternoon—let's say, we arrived there at about, at the McCauley residence, we—excuse me, when I say McCauley I mean the Thompson residence: We arrived there about 4:00 p.m. in the afternoon, and Norma arrived, to the best of my knowledge, at about 5:00 p.m.

Q. At that time did she have her children with her?

A. Yes, she came with the children and the maid.

Q. And then what did you do; did you swim in the afternoon, or what did you do there?

A. In the afternoon we had a few drinks and we watched —I personally didn't go swimming, but Norma's children did, my roommate Bob, and I am not sure whether Norma did or not. I cannot remember that. But I didn't go swimming. We were just socializing around the pool.

Q. Then you had dinner there?

A. That is correct.

Q. And do you recall what time you had dinner?

A. Between 7:30 and 8:00 o'clock. I cannot pinpoint the time.

Q. Do you recall what you had for dinner?

A. Yes, I can recall that—not all of the ingredients involved, but I am sure everyone remembers steak; and I do [fol. 1054] not remember anything else that we had, to be perfectly frank.

Q. You barbequed the steak outside?

A. I built the barbeque fire, that is correct. We all had our own assignments. Some were mixing the vegetables—I am sure we had vegetables. I don't know exactly what they were; I didn't pay too much attention to what was involved there since I was preparing the barbeque fire.

Q. Then did you have any fireworks there, it being the 4th of July?

A. To the best of my knowledge a few firecrackers were set off. Understand, this has been quite a while ago and I

haven't pondered this point, but to the best of my knowledge, a few firecrackers were exploded.

Q. At any time before you commenced your evening meal did Norma leave the group, that you remember?

A. Before we commenced the meal?

Q. Yes.

A. Only left the group to enter the kitchen in the house.

Q. She didn't leave the premises?

A. No.

Q. Did she at any time during the evening leave the premises?

A. She left the premises to take the children home.

Q. About what time was that?

[fol. 1055] A. I would say that was after dinner, to the best of my knowledge; about between 9:00 and 9:30. This is rough, understand. I can't quite pinpoint time because I was watching T-V and so forth; but I know she left to take the children home with the maid.

Q. All right, then. How long did you stay—I take it you were in another room watching T-V?

A. Yes, we were watching T-V, and also we went downstairs and danced for a period.

Q. Until when?

A. Until the completion of the evening, I would say around 12:20 when we left the residence.

Q. That was about 12:20, between 12:15 and 12:——

A. Between 12:15 and 12:30 a.m.

Q. All right, between 12:15 and 12:30 a.m. you left the Thompson home?

A. We left the Thompson residence, yes.

Q. How did you leave, as far as vehicles were concerned?

A. No. 1 car in the procession, you might say, would be John driving Norma's car.

Q. By John you are deferring to John Baird?

A. John Baird. Next, my roommate and his date, Pat, were driving John Baird's car.

Q. Your roommate being Bob Block?

A. My roommate, Bob Block. And then I got in the car [fol. 1056] of my date, and she was driving, Jean Davis.

Q. From there you proceeded where?

A. We proceeded toward Norma's residence.

Q. Did you arrive at Norma's residence?

A. I did not. We lost these people at one of the turns in the road, and since I had never been to Norma's residence I didn't know how to get there, and my date, Jean, didn't recall, either, so since we had lost these people we decided to first drive over to my roommate's date's house and wait, since we knew they were going to drop Norma off, naturally take Bob's date home. So we headed in that direction, figuring why don't we go out to your place to wait for them, because that was the plan, anyway, because first they were to drop Norma off, and then proceed to Pat's house and then proceed out to Jean's house, and then we would all come home.

Q. In any event, what was your ultimate destination; where did you next stop after you got separated from the cars?

A. After we contemplated for a minute we went directly to Jean's residence. That was in the Pacific Palisades.

Q. When you got there what, if anything, did you do?

A. Well, we arrived there at approximately 1:00 o'clock, 1:00 a.m.; and we waited for a short time then Jean told me——

[fol. 1057] Mr. Alexander: Just a moment, this will be objectionable, hearsay.

The Court: Objection sustained. We don't want conversation.

By Mr. Armstrong:

Q. Try to confine yourself to what was done, and if you and Jean had a conversation, just refer to that conversation, the fact of the conversation without telling us what was said.

A. Well, we arrived at her place, as I say, about 1:00 o'clock, and we waited for a reasonable period of time because——

Q. About how long did you wait, how long was it, would you judge?

A. About fifteen minutes, knowing that my roommate was supposed to come out and pick me up and take me back to Hollywood. Well, I have to tell you what my date said to tie in with the conversation.

The Court: Just say you had a conversation and then what happened.

A. We had a conversation.

The Court: Then what happened?

A. We had a conversation and it was determined at that time that John Baird wasn't sure where she lived because he had only been there one time and that was during the day —this is getting a little confusing?

Q. Perhaps I can help you out.

[fol. 1058] Anyway, you had a conversation, and as a result of a conversation——

A. We had a conversation and I began to think maybe John Baird cannot find this residence, so we better take other steps to find out how we would get in touch with them somehow.

We decided to call Norma's residence and find out what is Pat Gallagher's telephone number, figuring they were going to stop there after they dropped Norma off. Follow?

Q. Yes.

A. May I proceed?

Q. Go ahead.

A. This was approximately 1:15, and my date spoke with Norma at 1:15 a.m.

Q. Just a minute. Was this a number that one would dial, from the Pacific Palisades, or ask for the operator's assistance?

A. Dial.

Q. And she did in your presence dial the number?

A. That is correct.

Q. And in your presence she had a conversation?

A. That is correct.

Q. Then, after this conversation was over what next happened?

A. To the best of my knowledge she stated at that [fol. 1059] ime——

The Court: Wait a minute, you were not asked for conversation; you were asked what happened.

A. Oh, excuse me. We decided——

The Court: What did you do next?

A. We obtained from Norma—

The Court: No, just a moment, Mr. Fox——

The Witness: We made another telephone call, excuse me, we made another telephone call to Pat Gallagher and it was determined my roommate——

By Mr. Armstrong:

Q. Just a moment. Again, you can't say what was said or learned on the phone——

A. You just want the sequence of events?

Q. That's right, just the sequence of things and not what anybody else told you but things you personally observed. You said your date made this initial telephone call?

A. That is correct.

Q. Can you tell us approximately how long she was on the telephone?

A. The initial telephone conversation with Norma?

Q. Yes. How long did it last?

A. Approximately three minutes.

Q. Then she made another telephone call?

A. That is correct.

[fol. 1060] Q. Or had another telephone conversation, and then, without saying what you discussed in the line of the state of affairs or anything just then, what did you do?

A. We waited for a—we waited, figuring that they left this girl's house, which we were informed on the telephone and they would be seeking to find where I was at my date's place.

Q. You waited at Jean Davis' house?

[fol. 1061] A. That is correct.

Q. How long did you wait there?

A. I say we waited until 2:00 a.m.

Q. All right, what did you do at 2:00 a.m.?

A. At 2:00 a.m. I made a telephone call, I will say between 2:00 and 2:15 a.m. I made a telephone call.

Q. This time you made the telephone call?

A. That is correct.

Q. All right. Did you dial the number, or ask the operator?

A. I dialed the number that was given to me.

Q. And by whom was the number given to you?

A. By my date, Jean Davis.

Q. When you dialed this number, what happened?

A. The phone rang and there was no answer.

Q. And approximately how long did the phone ring—pardon me, you could hear the ringing sounds?

A. I will tell you the number of rings, about eight or ten times I let it ring.

Q. The phone rang eight or ten times and you heard the sound in the earpiece at least, and no one answered at the other end?

A. That is correct.

Q. Did you succeed in completing this telephone call at any other time?

A. I will have to say this, I tried to dial again.

[fol. 1062] Q. Then you dialed the number a second time?

A. That is correct.

Q. And the second time that you dialed it was when, in point of time, to the approximation of 2:15 that you have given us?

A. I would say about 2:20.

Q. All right, and the second time did you hear the ring signals in the earpiece?

A. That is correct. It rang about ten times; no answer.

Q. There was no voice on the other end?

A. No.

Q. So, then after you had tried the telephone call a second time, what did you then do?

A. Then I decided to call my room-mate.

Q. Did you call his number?

A. I did.

Q. Did a voice answer at the other end?

A. He was home; that is correct, he was home in Hollywood.

Q. You can't say what was said, but did you have a conversation with the person you recognized as your room-mate?

A. Yes.

Q. After that what happened?

A. After that I decided I would make another telephone

[fol. 1063] call.

Q. Did you succeed in that conversation?

A. I did.

Q. Then what happened next?

A. To clarify facts, I better tell you I made the telephone call to the cab company in Santa Monica.

Q. All right.

A. And accomplished my call.

Q. Then I take it later the cab responded to your call, is that correct?

A. That's right.

Q. You don't mind me leading here a little bit?

Mr. Alexander: No, that's all right.

By Mr. Armstrong:

Q. Eventually you got home?

A. Yes, that's right.

Q. By cab?

A. That's right.

Q. So far as the events of that evening were concerned, after you left your friends with whom you spent the evening at the Thompson's home, you did not again during that night time see John Baird, Bob Block, Pat Gallagher, or Norma McCauley?

A. Only Bob Block?

Q. When you arrived home?

A. Yes.

Q. Because he is your room-mate?

[fol. 1064] A. Correct.

Mr. Armstrong: All right, you may cross examine.

Cross-examination.

By Mr. Alexander:

Q. We don't intend to try to confuse you, really we don't, Mr. Fox——

A. You are not confusing me.

Q. The first call was made to Norma McCauley's home about 1:15 a.m., is that right?

A. That is correct.

Q. And you heard Jean Davis after she put the call in to Norma's home actually speak on the phone?

A. Yes.

Q. That lasted about three minutes?

A. Three to five minutes, yes.

Q. When Jean Davis completed that call, do you recall her making some remark to you?

A. To the best of my knowledge——

Q. Just yes or no.

A. Yes.

Q. Did that remark concern, without telling us what she said, did it concern Norma McCauley's voice?

A. You are asking for a dogmatic statement which I cannot give. I was going to say to the best of my knowledge there could be two possible times when I heard the comment; [fol. 1065] that is the only way I can classify this fact.

Q. A comment by Jean Davis?

A. By Jean Davis, regarding the voice, the tone of the voice.

Q. But she did make some remark at some time regarding that, concerning the tone of Norma voice?

A. That is correct.

Q. Now, about 2:00 a.m. you decided to call Norma McCauley's home, or did Jean Davis ask you to call?

A. I believe the time was 2:15, between 2:00 and 2:15.

Q. Pardon me, between 2:00 and 2:15; was that at the suggestion of Jean Davis that you made the call?

A. No, I initiated that action.

Q. You attempted to call Norma McCauley's home, is that right?

A. That is correct.

Q. And you permitted the phone to ring about eight or ten times?

A. That's right.

Q. No answer, and then you hung up?

A. Yes, yes—I assumed I had a wrong number; wanted to make sure. In fact, my date stated, "You might have the wrong number," and she gave it to me again.

Q. And again you called the number that you believed to be Norma McCauley's number?

A. Yes.

[fol. 1066] Q. And again you permitted that phone to ring how many times?

A. About ten times.

Q. And again you received no answer?

A. That's right.

Q. And, of course, you hung up?

A. Right.

Mr. Alexander: I have nothing further.

Mr. Armstrong: That is all, Mr. Fox. Thank you. May this witness be excused?

The Court: You are excused.

(Witness excused.)

Mr. Armstrong: The defense will call Jean Davis.

JEAN DAVIS, called as a witness on behalf of the defendant, after being duly sworn, was examined and testified as follows:

The Clerk: Be seated and state your name, please.

The Witness: Jean Davis.

The Clerk: How do you spell Jean—J-e-a-n?

The Witness: That is correct.

Direct examination.

By Mr. Armstrong:

Q. Where do you live?

A. 1500 Serrento Drive.

[fol. 1067] Q. That is in what community?

A. The Riviera section.

Q. I beg your pardon?

A. The Riviera section in Los Angeles.

Q. Is that sometimes referred to as the Pacific Palisades?

A. Our postal box is Pacific Palisades, but we are not in the Palisades.

Q. Now Miss Davis, did you know Norma McCauley during her lifetime?

A. Yes, I did.

Q. And how long had you known her prior to July 4, 1955?

A. Well, I first met Norma sometime ago, but we didn't become really friendly until about last March.

Q. How long ago was it that you first met her?

A. Well, I can't say exactly. We both belonged to a group, and I had met her there on several occasions. I would judge, to the best of my recollection, possibly two years from the time I first met her.

Q. Then directing your attention to July 4th of 1955, were you present at some place with Norma McCauley or where Norma McCauley was also in attendance on that date?

A. Yes, sir, I was.

Q. Pardon me. To go back a moment to the time that you had known her in the last two or three years or more [fol. 1068] specifically in the few months just prior to her death, had you ever been to her home?

A. Yes, I had.

Q. Approximately on how many occasions had you been there?

A. I think just a couple of times.

Q. On this particular occasion of July 4th, where were you that Norma was also in attendance?

A. At her parents' home, at a party she was giving.

Q. And do you know where the parents' home was?

A. In Bel-Air.

Q. And how long were you at this home—how long were you on the premises of her parent's home with Norma?

A. Approximately five hours.

Q. And that five hours ended when? When did you leave there, approximately?

A. Close to 12:30.

Q. And then—incidentally, how had you gotten to the Thompson place?

A. I had driven by myself. I was late to the party and I had to come by myself, later.

Q. And so you had your car?

A. So I had my automobile.

Q. When you got ready to leave the Thompsons, how did you leave as far as vehicles were concerned?

A. Myself, you mean?

[fol. 1069] Q. No, the whole group that you observed.

A. Norma had her automobile and she was with John Baird, and then Pat Gallagher and Bob Block were in an automobile, and my date, George Fox, was with me in my automobile.

Q. All right, and you left—you say you left the Thompsons about 12:30, is that right?

A. As close as I remember, it was right around 12:30.

Q. And did you have an agreed destination at the time you left there?

A. We were all going to go to Norma's home and to drop Norma off, and then we were going to—we were going to follow John and Bob when they delivered Patty home, and they were going to follow us to my home and take George home from my home.

Q. What happened to that plan?

A. Well, I knew how to get to Norma's house, but not from the Thompsons' house, and they were ahead of us and they went around the corner and we lost them, and I got lost, so we sat at an intersection and thought maybe they might come back and find us, and we sat there and discussed what to do, and we were lost, so we just waited for a few minutes.

Q. And then when you finally decided on some other course of action other than waiting, where did you go?

A. Well, we had—we considered the fact that perhaps we [fol. 1070] should go to Patty's and catch them there, but then we thought that it would perhaps be better to just go on to my home and that they eventually would get there, so we went directly to my home from Bel-Air.

Q. After you got to your home, what did you do?

A. Well, we came in the house and shortly after we got in, why we thought that the best thing to do was to try to locate John and Bob, at either Norma's or Patty's house. We didn't know where they were, but we were going to try to catch them and explain to them where we had gone and why we weren't following them.

Q. So what did you do?

A. So I phoned Norma's residence.

Q. And did you dial the number or did you ask the operator's assistance?

A. I dialed it.

Q. Had you dialed this number before?

A. Oh, yes.

Q. You were familiar with the number?

A. Oh, yes.

Q. Do you happen to recall the number?

A. Not now.

Q. But at that time you were familiar with the number?

A. Yes, sir, and I also had my little phone book next to the phone and I checked it before I called, to be sure.

[fol. 1071] Q. Approximately what time was it that you placed this telephone call?

A. Well, I didn't look at my watch, but I think it was between 1:15 and 1:30.

Q. And when you placed this telephone call, did a voice answer on the other end of the phone?

A. Yes.

Q. Did you recognize the voice?

A. Yes, it was Norma.

Q. It was that of Norma, you say?

A. Yes.

Q. And then without saying what was said, you did have a conversation with Norma?

A. Yes.

Q. And can you tell me approximately how long that conversation lasted?

A. Well, it was rather brief, maybe three or four minutes, brief.

Q. All right. After you had completed the conversation with Norma, what did you next do?

A. I spoke to George for a second, and then I made another phone call.

Q. And was that phone call answered?

A. Yes, it was.

Q. Did you recognize the person's voice on the other end?

[fol. 1072] A. Yes.

Q. Who was that?

A. Well, now, I am not sure if I got Patty immediately, or if I spoke to her father and he called her, but anyway I spoke to Patty Gallagher.

Q. Again, without saying what was said, after you had a conversation with Patty Gallagher, what did you next do?

A. We sat and waited and talked.

Q. And what was the next thing that happened after sitting and waiting and talking?

A. George made a phone call—made two phone calls.

Q. Did you furnish him any information with which to make this call?

A. Yes, I gave him—my little book was there—he made two phone calls. He phoned once. I think I told him the number and he phoned and there was no answer so he phoned again, and he thought that possibly due to the fact that

there was no answer that he had dialed wrong or that possibly I had given him the incorrect number, so we looked it up and he dialed the second time.

Q. When you looked it up, you were looking up what number?

A. Norma McCauley's number.

Q. In your presence and at your direction he dialed this number that was Norma McCauley's number?

A. Yes.

[fol. 1073] Q. And the number that you furnished him was the number that you had used to successfully complete a conversation with her an hour or so earlier, is that right?

A. Yes.

Q. Incidentally, did you happen to notice about what time it was the second time the call was made?

A. Again I am not certain, but it probably was about 2:20. I am not sure, but I think it was about that time.

Q. All right. Then, after George had dialed the number, did you observe how long he waited at the phone after he had completed dialing?

A. You mean before he did something else?

Q. Did he have a conversation on the phone?

A. No, he didn't have a conversation.

Q. Would you tell us approximately how long he waited before replacing the receiver, then?

A. Well, both times he let it ring quite a while.

Q. All right. Then after this telephone call, he made other telephone calls?

A. He made two more telephone calls.

Q. And then as a result of these telephone calls, he eventually left your home?

A. Yes.

Q. And as far as you were concerned, after approximately 12:30 or thereabouts, you did not again that evening see George Fox, John Baird, Bob Block, Patty Gallagher, [fol. 1074] or Norma McCauley, is that correct?

A. That is correct.

Q. But you did have conversations with the two girls, with Norma McCauley and Patty Gallagher, is that correct?

A. That is correct.

Mr. Armstrong: Thank you. You may cross examine.

Cross-examination.

By Mr. Alexander:

Q. That is Miss Davis, is it not?

A. That's right.

Q. Miss Davis, this was a barbeque at the home of the Thompsons, was it not, on the night of July 4th?

A. Yes, it was.

Q. Do you remember what you ate there?

A. Yes, I do.

Q. Tell us, please.

A. We had steak—barbequed steak. We had a potato salad with potatoes that weren't very well cooked, and we had peas?

Q. Peas?

A. Peas.

Q. You mean green peas?

A. Green peas, frozen or fresh, and we had a relish dish of some sort. I am not sure, but I think it was little green [fol. 1075] onions and something else, and coffee was served, and cookies, and if there was anything else there could have been more—but that is what I remember.

Q. Miss Davis, before 1:15 or 1:30 a.m. of the morning of July 5th, 1955, had you called Norma McCauley on other occasions?

A. Yes, I had.

Q. On how many occasions, would you say?

A. On quite a few occasions.

Q. You recognized her voice when you heard it over the phone, did you not?

A. Yes.

Q. Now, on this particular morning between 1:15 a.m. and 1:30 a.m. you had a conversation with Norma McCauley, did you not?

A. Yes.

Q. And after about three minutes or so of conversation with her, you hung up. Did you make some kind of remark to Mr. Fox concerning the tone of her voice?

Mr. Armstrong: To which the defendant will object as being an improper question from the standpoint of calling for an opinion and conclusion, and calling for hearsay as to remarks made out of the presence——

The Court: The objection is sustained on the latter ground only.

By Mr. Alexander:

Q. Miss Davis, on these prior occasions that you spoke [fol. 1076] to Norma McCauley, could you describe her voice to us, please?

A. Well, Norma — whenever I had spoken to Norma on the telephone or in person, an outstanding thing I always remembered of the fact she always had an extremely cheerful voice and always seemed — no matter in what kind of a rush she was in — never was abrupt and extremely friendly and gay, and just a vivacious, friendly voice.

Q. On this particular morning between 1:15 and 1:30 a.m. on July 5th, 1955, describe her voice as you heard it on this occasion.

A. Well, she was — spoke in just a rather listless manner, kind of a monotone, and very cool, and not very friendly. She just seemed — she was very polite. She answered the questions I asked, but there was no vivaciousness or happiness in her voice, particularly, and she seemed to want to get through with the conversation. She didn't want to carry on — have a little chat in the middle of the night.

Q. After you hung up, did the tone of her voice create any uneasiness in you?

A. No.

Mr. Armstrong: I will object to that, absolutely immaterial, your Honor.

The Court: Yes, the objection is sustained. The answer may go out, if it is in.

[fol. 1077] By Mr. Alexander:

Q. In any event, sometime later, about 2:20 a.m., you had Mr. Fox phone that same number that you had called when you had spoken to Norma, is that right?

A. That is true.

Q. And there was no answer at all?

A. No answer at all.

Q. And a few minutes later you had Mr. Fox again attempt to reach that same number?

A. Yes. We didn't understand why it hadn't answered.

Q. There was no answer?

A. There was no answer, either, then.

Q. I am sorry, Miss Davis. I have been asking you about the morning of July 6th. These phone calls are of the morning of July 5th?

A. Yes.

Q. That was following the barbeque at the Thompson home?

A. Yes.

Q. Thank you. I am sorry.

The Court: All of the answers you have given were with relation to the morning of July 5th?

The Witness: Yes. I didn't hear him say July 6th.

The Court: Just a moment. I think Mr. Armstrong has some more questions.

[fol. 1078] Re-direct examination.

By Mr. Armstrong:

Q. Miss Davis, now, you told us about the menu that you had there. Was there any particular reason that it struck you about this menu that you happen to remember it as much in detail as you do?

A. Well, yes. I remembered the pototato salad because Norma had apologized for it. She had said something about she had intended to make it, but she hadn't had time, and I believe she said that the housekeeper had made it, and that the potatoes were not thoroughly cooked, and therefore the potato salad wasn't very good, and she apologized, and that is why I remembered the potato salad.

As far as the peas are concerned, why, I remembered the peas, I don't like canned peas and I am very fond of fresh or frozen peas, and when the peas were passed I took a very small portion and I wanted more and there was no more, and that is why I remembered the peas.

Q. So you distinctly remember, then, that the peas were all consumed at dinner and there weren't any left over?

A. There may have been, but I didn't see them. I was looking for some, but I didn't see them.

Q. And then as far as the rest of the evening, was Norma in your presence most of the time?

A. Well, off and on everyone was—most of the time—people were kind of wandering around the house. She had [fol. 1079] to take her children home, and we were looking at television, and later we were dancing, and we were all downstairs dancing at the same time, and we were helping Norma in the kitchen at the same time just before we left, but there were times when we were not all together.

Q. After she returned from bringing the children home and you were down in the area where the dancing was going on, did any of the group, to your observation, have anything further to eat?

A. No.

Q. Specifically—

A. (Interrupting) They might have candy or peanuts.

Q. Something from a bonbon dish?

A. I don't remember it, but they may have, but as far as actually serving food, no.

Q. There wasn't a meat dish served?

A. No.

Q. Nobody ate any peas later in the evening?

A. Not that I know of.

Q. And the group was such that if someone had eaten a sort of a hot dish like that, or meat, you would have noticed it, would you not?

A. I suppose so.

Q. In other words, you were all there. Were you dancing in the same room, a sort of a playroom, a game room?

[fol. 1080] A. We were all dancing in the same room.

Q. So as far as your observation was concerned, from the time you completed dinner until the time you left the Thompson home, you didn't observe Norma having anything else to eat?

A. No, I didn't.

Mr. Armstrong: Thank you very much.

Mr. Alexander: Pardon me just a moment. I think a juror wants to ask a question.

The Court: Complete your examination first.

Re-cross examination.

By Mr. Alexander:

Q. Before you came to court today, did you tell anyone that you had green peas as part of the barbeque dinner at the Thompson home on July 4th?

A. I may have told—I know I told my mother what we had to eat the next day, and I think I discussed it with George Fox, and I also told Mr. Armstrong.

Q. Mr. Armstrong, the attorney for the defendant?

A. Yes.

Q. You told him that?

A. Yes, I did.

Mr. Alexander: That is all.

[fol. 1081] Re-direct examination.

By Mr. Armstrong:

Q. Miss Davis, prior to your coming to court here, and prior to talking to me, did you discuss your testimony generally, or did you discuss the events of the evening generally with anyone from the District Attorney's office?

A. Very vaguely.

Q. But in any event, did you discuss the fact of the telephone conversation with the District Attorney's office?

A. Just about the fact that I had made the phone call. There was no detail to speak of, just vaguely.

Q. Now, as far as the second call, the incompleted call, the one that wasn't completed that was made twice, did Mr. Fox make that call of his own initiative, or did you suggest it to him, or whose idea was it?

A. You mean the second time?

Q. The non-completed call.

A. The non completed call?

Q. Yes.

A. I think it was more or less decided by both of us as the logical thing to do, to check to find out whether someone—why someone hadn't phoned us or if anyone had heard from them.

Mr. Armstrong: That is all. Thank you.

The Court: Do you have a question, Mr. Kavanaugh?

[fol. 1082] Juryman Kavanaugh: Yes. In relation to your call, had you ever called her after she had returned from the night before?

The Witness: No.

The Court: That is all.

Mr. Armstrong: Just one more question.

Re-direct examination (Continued).

By Mr. Armstrong:

Q. When you did talk to Norma McCauley, did it strike you that her voice sounded a little tired?

A. I thought she sounded very odd, and I later thought that maybe she was tired.

Mr. Armstrong: That is all. That answers it. Thank you, Miss Davis.

The Court: We will take the afternoon recess, ladies and gentlemen. Do not discuss the case among yourselves nor talk to anyone about it, nor allow anyone to talk to you about it. Do not form nor express any opinions or conclusions about the case until the matter is finally submitted to you.

We will take a ten-minute recess.

(Short recess.)

The Court: The jury is present. Your next witness, Mr. Armstrong.

Mr. Armstrong: The defense will call the defendant John [fol. 1083] Crooker to the stand.

John Russell Crooker, Jr., called as a witness in his own behalf, having been previously duly sworn, was examined and testified as follows:

The Court: You have already been sworn, so be seated and state your name, please.

The Witness: John Crooker.

Direct examination.

By Mr. Armstrong:

Q. How long have you lived in California, John?

A. Since the fall of 1948.

Q. The fall of 1948, and your original home was where?

A. Bucksport, Maine.

Q. And when did you first enter a secondary school in California?

A. A secondary school?

Q. Well, that is higher than high school, college or university.

A. In the spring of '49.

Q. What school was that?

A. U. S. C.

Q. How long did you go to U. S. C.?

A. Until April of 1949.

[fol. 1084] Q. When you say the spring of 1949——

A. February.

Q. You went there for less than a semester?

A. That is correct.

Q. Where was the first school that you went to that you stayed at least a full semester or more?

A. In 1950 I entered Pepperdine College and attended there for three years, graduating in 1953.

Q. You went to Pepperdine College from 1950 to 1953 and you graduated with a Bachelor of Arts degree, is that right?

A. Yes.

Q. And it was while at Pepperdine College that you met Fred Chel, who testified here?

A. Yes.

Q. All right. Then, after leaving Pepperdine College in June of 1953, what was the next school, if any, that you entered?

A. I then entered U. C. L. A. Law School.

Q. And that would be in the fall of 1953?

A. Yes, that would be the fall of '53.

Q. And what was the first occasion that you ever met Norma McCauley?

A. The first occasion, I believe, was in the latter part of June, 1953, when I was interviewed by her first pursuant to employment by the McCauley family.

[fol. 1085] Q. The McCauley family consisted of Mrs. McCauley and anyone else?

A. Mr. McCauley and the three boys, Kirk, Craig, and Kevin.

Q. And at that time in June, 1953, Mr. and Mrs. McCauley were living together in the same home, is that right?

A. Yes.

Q. And then subsequent to this interview with the McCauleys, what happened?

A. I told Mrs. McCauley that I had been referred to her — I think by the school — now, I had some references through local advertisements and some through the school, and I think this reference was through the school for part-time student employment, and that her name had been given me.

Q. I see. Then, subsequent to the conversation regarding it, did you actually accept employment there?

A. Yes. I subsequently had an interview with Mrs. McCauley and her husband, and subsequent to that interview was accepted for the employment.

Q. All right, and what was the nature of your employment? What was the understanding that you and the McCauleys arrived at at that time as to what consideration you were to receive and what consideration they were to receive in this agreement?

[fol. 1086] A. Just very generally—and it was a general understanding—that I would help them in the household duties, and that about covers it. It ranged from baby-sitting to bartending, as we have discussed it before, I believe.

Q. All right, and then did you have, at that initial conversation—was there an understanding as to what you were to receive? You told us what they were to receive. They were to receive your services as you described. What were you to receive?

A. At that time we did not discuss—as I recall—we did not discuss the amount of stipend at that time.

Q. What was discussed that you were to receive, if anything?

A. You mean at that time?

Q. Yes, in return for your services to them, what were you to receive?

A. When I originally went to their home, I was also employed in another capacity by another party.

Q. What type of employment was this?

A. For the California Bank.

Q. I see. So——

A. (Interrupting) Consequently, the stipend wasn't at all in issue, and we did not discuss it at that time.

Q. It was understood that you were to get room and board, was it not?

[fol. 1087] A. Yes.

Q. And did you have a room to yourself on these premises, or did you sleep in with the children, or how was that worked?

A. I had a room which has been designated as the maid's room here (indicating).

Q. Referring to People's Exhibit 9, the room that you occupied is the one that is on this diagram called the maid's room, is that correct?

A. Yes.

Q. Well, then, how long did this rather loose arrangement that you have told us about exist, where you had another job and you did chores for them in exchange—

A. (Interrupting) In August, sometime in August I terminated the employment with the bank and remained there at the home.

Q. Then, at that time—did you later or at the beginning of the academic year, or any other time, make any arrangement with them as to money that you were to receive in addition to the room and board?

A. Yes. On several different occasions we discussed it. Of course, this was all experimental as to what my duties would be, and we didn't want to make it definite. I know at one time we talked about $30.00 a month stipend, and another time we talked about $40.00. I can't give you the exact time when we discussed these or even what our decision was on the matter.

[fol. 1088] Q. Well, do you recall what you actually were paid when you started, let's say for the time when you started at U.C.L.A. so that you were no longer required to work at outside employment and you were working in their home and also going to school, they were paying you how much money during the month of September, do you recall?

A. I would say, yes, in September it would certainly be then that I began to receive some stipend, and whether or not it was $30.00 or $40.00 I don't recall exactly.

Q. In addition to furnishing you with room and board and giving you some money, either $30.00 or $40.00 a month, was any arrangement made as to books or school supplies or anything like that?

A. No arrangement was made. Through Norma's initiative she negotiated a loan, arranged a loan from U.C.L.A., and also from her mother to help in the initial, those initial costs of starting school with respect to books and supplies.

Q. You say the loan was made from U.C.L.A.; did you make two loans?

A. There were two loans, and, in addition may I say that the loans were not merely to cover school expenses; they also covered such things as a dental expense that I had at that time.

Q. Do you remember the amount of the loan from Norma's—I take it, it is from Mrs. Thompson?

A. Yes.

Q. Do you remember the amount of that loan?

[fol. 1089] A. I believe it came on two separate amounts, and I think the total was $400.00—I think it came, perhaps it came in $200.00 amounts.

Q. All right, then, this arrangement that you had once the school year started continued how long?

A. Mr. and Mrs. McCauley separated, I believe, about the 20th of September, somewhere along there. I know school started about that time, and as I recall it was just previous to the starting of school when they separated. I was there maybe a week, maybe two weeks under the same arrangement. Then a girl friend of Norma's arranged with Norma to come and stay there in the home; and I cannot be exact how long she stayed there, although it is my best recollection she was not there during Thanksgiving of 1953. In other words, she had moved out by that time.

Q. Did you continue to stay there during this period of time that Norma and her friend were occupying the house?

A. Yes, during that interval, yes, and shortly thereafter. Now at that point, as I say, after this girl friend had moved, and perhaps a week, perhaps two weeks after that Norma's parents arranged living quarters for me in their residence.

Q. And this would be about sometime in November or early part of December, or where was it, just approximately?

A. Well, I would say it would be around Thanksgiving, just after or just before.

[fol. 1090] Q. Then at the time that you went into the Thompson home did you have an arrangement with the Thompsons that they were to pay you, or was Mrs. McCauley continuing to pay you, or how was that working out?

A. No, I was still employed by Mrs. McCauley.

Q. In other words, you stayed at the Thompsons, but you were still in Mrs. McCauley's employment?

A. Yes. In fact, I didn't move there. I was given quarters there, but all of my books and clothing, a substantial amount of my clothing and other personal effects remained in the McCauley house. And the arrangement was that I would sleep at the Thompson home and still spend a substantial part of my non-school time at the McCauley residence.

Q. And so during this period of time that you were living in the one place and working in the other, you continued to perform the type of chores that you had done before, is that right?

A. Well, there was change in that regard, the change being that with school and my finding out what the requirements were in school, that Norma began to employ other help in addition to myself.

Q. Well, then, how long did this arrangement continue with the Thompsons? How long were you living in their house, or connected with the McCauley home and the Thompson family, either or both?

[fol. 1091] A. It is my best recollection that this arrangement which I have just described continued through Christmas of 1953. I could be incorrect on the point. I have tried to establish the time, and I would say about the first of the year the Thompsons arranged for me to leave the McCauley residence entirely and be employed by them.

Q. Now this could have been when?

A. It could have been as late as February, 1954.

Q. Then how long did you remain with the Thompsons?

A. Until June, 1954, I would say, about—well, at least it was the date of the examinations at U.C.L.A., just a day or two before the examinations began at U.C.L.A.; and I think that was about the middle of the month, or something like that.

Q. All right, now going back a bit from there. During this time that you were associated with Norma McCauley in the manner that you described, both living in her home and living in the Thompson home, did the personal relationship that you had with Norma change from what it had been when you were initially employed?

A. Yes.

Q. And when was it; when did this change, whatever it was, without saying what it was, begin to take place?

A. Well, it was a gradual development, Mr. Armstrong. I can't fix the exact date.

Q. Well, had there been a substantial change in your [fol. 1092] initial relationship by June of 1954?

A. Oh, yes.

Q. Well, going back a little bit, then, by February, 1954, at the time you went there in full time employment, let's say?

A. Oh, yes. In fact, about the fall of 1953 there had been this change—had occurred.

Q. All right, then, can you describe what your relationship became with Norma McCauley, as opposed to what it was when you were merely talking with her with reference to employment?

A. It became social in nature; in other words, personal.

Q. And then this relationship continued to change in one way or another from the fall of 1953 on through the early months of 1954, is that right?

A. Yes, sir.

Q. Did this relationship, as far as you were concerned, develop into a feeling of love?

A. Yes, sir.

Q. Can you tell me approximately when it was you realized this had progressed to this point?

A. The fall of 1953.

Q. And did Norma indicate to you that she felt the same way about you about that time?

A. Yes, sir.

[fol. 1093] Q. And can you remember the first time that you had any what you might call date with Mrs. McCauley, other than something that was just done incidental to you being employed there in the home?

A. Well, I know what the occasion, what the first one was. We went to, I believe it is called the Bel-Air Hotel there in Bel-Air. And then subsequently, or, rather, following a brief stay there we went to the Sapphire Club at Florence and Crenshaw.

Q. When you say "brief stay at the Bel-Air Hotel", you mean you stayed for cocktails or danced there?

A. Yes. We didn't dance; we just had, as I recall, one cocktail there.

Q. After you stayed there briefly, you went down to the Sapphire Room?

A. Yes.

Q. This Sapphire Room, is that the place where the witness who testified, Jeanne Pollard, was employed?

A. Yes.

Q. You met her on the occasion of your visits there?

A. Yes.

Q. Why did you—or how did you happen to go to the Sapphire Club from the Bel-Air neighborhood?

A. Because of the nature of our relationship; we didn't want to be seen.

Q. What is the distance from the Bel-Air neighborhood [fol. 1094] to the Sapphire Club, approximately?

A. It is quite some distance. Of course, the Sapphire Club is in the southwest part of town. This Bel-Air area, I would say, is northwest, considerably northwest of that area of the town.

Q. I see. All right, then, was this relationship that—well, strike that out, please.

After this initial date that you had when you went to the Bel-Air Hotel, and then the Sapphire Club, was there a recurrence of that in the near future?

A. Yes.

Q. When was the next time you went out together?

A. Well, as a matter of fact we used to go there almost once a week, Mr. Armstrong. It was a special place in our minds—it was a place where we could go and be together and not be known.

Q. All right. And you say you went there about once a week; and I take it this continued from the time you first mentioned, in the fall of 1953, until the time we had gotten

up to, about June, 1954 when you left the Thompson employment, is that right?

A. You say did it continue?

Q. Yes.

A. Yes.

Q. When you left the Thompson employ, where did you go then, as far as living quarters were concerned?

[fol. 1095] A. I then lived for a brief time in the Westwood Hotel, I think it is called, a little hotel on Santa Monica Boulevard in Westwood.

Q. Then after a brief time there, where did you go?

A. Then I moved to the apartment at 5128 Marathon Street.

Q. And that is where you were living at the time of the events that are the subject of this trial, is that right?

A. That is correct.

Q. And you moved there approximately when?

A. I moved there—I physically moved in on the 11th day of September, 1954. I actually paid the rent on the 10th day of September.

Q. Was this place that you had there at 5128 Marathon, what was its nature?

A. It was a beach apartment with a kitchen and living room, a let-down bed, a dressing room, small dressing room adjacent to the bath.

Q. When you moved in, was it furnished or unfurnished?

A. Furnished.

Q. In addition to the furniture that was in there, was there any additional furniture provided for the place?

A. Yes.

Q. Was any of this furniture provided by Norma McCauley?

A. Yes. In fact, a lamp and a chair.

[fol. 1096] Q. Just a moment, please, would you stop right there for just a moment?

(Showing photographs to counsel.)

By Mr. Armstrong:

Q. I have here two pictures, if the Court please, which I would like to mark as Defendant's Exhibits next in order, respectively.

[fol. 1097] The Court: They may be marked Defendant's Exhibits L and M respectively for identification.

By Mr. Armstrong:

Q. I show you these pictures, John, that are two pictures that have been marked Defendant's Exhibits L and M for identification, and direct your attention first to Defendant's Exhibit L. I will ask you if you recognize what that picture is?

A. Yes, I do.

Q. And that is a picture of what?

A. That is a picture of actually a pair of chairs. This is one of that pair of chairs, and this chair was loaned to me by Norma to be used in my apartment.

Q. Then looking at Defendant's Exhibit M for identification, what does that represent?

A. That is the lamp that she loaned me.

Q. These were lamps that she loaned to you for your use in your apartment, is that right?

A. Yes.

Q. Do you know, had you seen these pieces of furniture before they were taken to your apartment?

A. Yes.

Q. Where had they been before that?

A. At her home.

Q. They came from the Norma McCauley home?

A. Yes.

Q. Now, were there any other things that were furnished [fol. 1098] by Mrs. McCauley in furnishing this apartment?

A. Well, yes, little artifacts, for example, the knick-knack shelf that I used on the kitchen wall, little antique prints that were on the living room wall, a decanter, a little ceramic piece, ceramic pieces, knick-knack pieces.

Q. Did all of these items you are telling us about come from Mrs. McCauley's home, things that had been in her home that she transferred to your apartment?

A. Yes.

Q. For your use out there?

A. Yes.

Q. Then, at the time you moved into the apartment on Marathon, on an average, how often did you see Mrs. McCauley from that time forward?

A. At first, it varied. Sometimes we would see each other three times a week, sometimes once a week; depending on what her social requirements were, and depending on what my own obligations were. I would say sure on the average of at least twice a week.

Q. During this period of time after you moved into the Marathon Street address did Mrs. McCauley, to your knowledge, have access to your apartment in your absence?

A. Yes.

Q. Do you know how she obtained access to the apart-
[fol. 1099] ment?

A. She had keys.

Q. She had a key to your apartment?

A. To the apartment and——

Q. In addition to supplying the furniture and the objects of art that she had loaned to you for your use, did she make any gifts to you during this period of time on visitations of hers?

A. Yes.

Q. When she came over, whether you were there or not, would she bring you things?

A. Yes.

Q. What type of things would she bring?

A. She brought me food, of course, and a number of occasions, frequently left food there.

Q. Did she ever leave any money there?

A. Yes.

Q. Did she leave money at the time you were not there?

A. Yes, in fact, usually when I was not there.

Q. Now, on occasions that Norma visited your apartment in your absence, did she ever leave any notes or memorandum in your apartment?

A. As far as I know she invariably left me a note.

Q. In other words, you would say that when she came there——

[fol. 1100] A. And I was not there, yes.

Q. It was her custom to leave some kind of note?

A. Yes.

Q. What would she ordinarily write these notes on?

A. Usually on—I had used these little note cards, pasteboard note cards——

Q. Like filing cards?

A. Filing cards, yes.

Q. She would write notes on those?

A. Well, in addition to that, Mr. Armstrong, she left me many notes that were more in letter form. She put them in an envelope and just left them there.

Q. And when she wrote you something more than what would go on one of these little filing-type cards, these would be in envelopes more like a letter, is that right?

A. Yes, except they were not mailed.

Q. They were not mailed; she left them there?

A. Yes.

Q. I show you what has been marked Defendant's Exhibit I-1 for identification——

Mr. Alexander: May I see that, please?

Mr. Armstrong: Yes, I am sorry. (Handing paper to Mr. Alexander.)

Q. I will show you here what has been marked Defendant's Exhibit I-1 for identification and ask you if you recognize that handwriting?

[fol. 1101] A. Yes, I do.

Q. This appears to be on about a three inch by five inch card. This was the type of filing card to which you just referred?

A. Yes.

Q. There is writing on both sides of this, apparently. In whose hand is the writing on the other side?

A. That is mine.

Q. On this side you recognize your handwriting?

A. Yes.

Q. And that handwriting is whose?

A. That is Norma's.

Q. Now,——

If your Honor please, perhaps we had better approach the bench just a moment here, if the People wish, before going into this farther?

The Court: Go ahead.

By Mr. Armstrong:

Q. Directing your attention to Defendant's Exhibit I-1, is this little note signed with Norma's name.

Mr. Alexander: Just a moment——

The Witness: May I——

Mr. Alexander: Just a moment, object to that; the instrument speaks for itself.

The Court: Yes, objection sustained.

The Witness: I would——

[fol. 1102] The Court: There is no question pending.

The Witness: May I correct my answer to another question?

The Court: All right.

The Witness: To the previous question.

Mr. Armstrong: Yes. What was it you wanted to correct, John?

A. Whether or not that is Norma's hand.

By Mr. Armstrong:

Q. You recognize that as being her hand in general?

A. Yes, I can see her writing and identify it much more easily than I can this writing. I don't want to make any mistakes about it.

Q. All right, we will put that aside for a moment. You have also mentioned notes that were left. Well, I will show you here a piece of paper that has been marked Defendant's Exhibit I-5 for identification. It appears to be a white piece of notepaper with a yellow border around it.

A. Mr. Armstrong, this is her writing.

Q. After considering this card it is your opinion——

A. Yes.

Q. That that is her writing?

A. Yes.

Q. All right, fine. Incidentally, directing your attention to Defendant's Exhibit I again for a moment, do you recall [fol. 1103] from—would you read that, please?

A. (Witness peruses document.)

Q. Have you read that just this moment?

A. Yes, I did.

Q. From reading it are you able to place the approximate date that that particular note was discovered by you in your apartment?

A. That is pretty hard for me to do on that particular note.

Q. How close are you able to say—I mean, can you say what year it was?

A. I think so.

Q. What year would you say it was?

A. 1955.

Q. And can you give us an idea as to what part of the year it was?

A. The first part of the year.

Q. One of the early months of 1955 would be your estimate of the time?

A. Yes. I have a way of doing that with the boy who moved in upstairs.

Mr. Alexander: I move to strike that out, if the Court please, as a voluntary statement.

The Court: Yes, the last statement, the last sentence may be stricken out.

By Mr. Armstrong:

Q. I will direct your attention to what has been marked [fol. 1104] Defendant's Exhibit I for identification, Defendant's Exhibit I-5, and ask you if you recognize the handwriting on that particular note?

A. Yes, I do.

Q. Do you also recognize the stationery on which the note was written?

A. Yes, I do.

Q. By whom was that note written?

A. By Norma.

Q. Will you examine that; please.

A. (Witness peruses document.) Yes.

Q. Is there any way—you have examined it, now—is there any way you can tell from the examination of that note that you can place the date on which it was received?

A. Well, yes.

Q. And what date do you place that note as having been received by you?

A. Well, this is during 1955.

Q. Can you tell us what part of 1955; are you able to place the approximate time; if you can't place the exact time just tell us the approximate time.

A. On this particular note it is impossible to do much more than that, do much more than to say it was in 1955, that is.

Q. You do recognize the hand as being that of Norma McCauley?

[fol. 1105] A. Yes.

Q. That note was left by her in your apartment?

A. Yes.

Q. I will show you here a note that has been marked Defendant's I-12 for identification. That appears to be in handwriting on pale blue paper, and ask you if you recognize, first, the stationery?

A. Yes.

Q. And do you recognize the envelope?

A. Yes, sir.

Q. For the record, the envelope is a pale blue envelope with a red lining on the inside, pale blue stationery. Would you read that one, please.

A. (Witness peruses document.)

Q. Have you completed reading it?

A. Yes.

Q. Are you able to tell from the contents of the note approximately when the note was received by you?

A. Sometime in June.

Q. June of which year?

A. This year, 1955.

Q. Can you say whether or not it was the early or the last part of June?

A. I was trying to fix this week end, Mr. Armstrong.

Q. Anyway, you have identified it as being sometime in the month of June?

[fol. 1106] A. Yes.

Q. Of 1955.

At this time, your Honor, I would like to move that Defendant's Exhibit I-1, I-5 and I-12 be admitted in evidence and marked as Defendant's Exhibits in evidence, Defendant's Exhibits I-1, I-5, and I-12.

Mr. Alexander: To which I object as incompetent, irrelevant and immaterial; does not tend to prove or disprove any issue in the case. And if your Honor would read them, and might I respectfully suggest that your Honor read them——

The Court: Very well.

(Court peruses letters.)

The Court: Do you want to approach the bench, counsel?

[fol. 1107] COLLOQUY BETWEEN COURT AND COUNSEL

(The following proceedings were had at the bench, outside of the hearing of the jury:)

Mr. Alexander: There is an additional objection to the first one in that it contains self-serving statements by the defendant, hearsay and immaterial.

Mr. Armstrong: I will stipulate that the portions written by the defendant may be blacked out or made unreadable because under no circumstances would that be admissible, and, therefore, their destruction couldn't possibly imperil the defendant's position in any way. I think we could ink the defendant's portion out with black ink so that the exhibit could be read on one side and nothing could be made out, even if examined, on the other.

The Court: What is your theory with regard to the admissibility of these, Mr. Armstrong?

Mr. Armstrong: Well, your Honor, it is my contention and my position throughout, particularly with reference to the witness Baird and with reference to the witness Chel, that the state of mind of the decedent is an admissible piece of evidence; and we can only arrive at the state of mind of a person who is not here to tell us about it by examining all of the things that were said and written by the person, particularly when the things that were said and the things that were written covered or dealt with the same period of time.

I am not intending to rebut my own testimony with my [fol. 1108] own evidence, but the point is that I think the conduct of the decedent and the relationship of the decedent to this defendant can only be explained by examining all of the facets of the relationship; and that these notes are indicative of her expressed feeling at that time. I think that there can be no question——

The Court: How does her feeling one way or the other establish whether or not this defendant committed the act for which he is charged?

Mr. Armstrong: Because, your Honor, because of the nature of the act, because of the fact that there is no direct evidence in this record that the defendant committed the crime. The People's case is based 100 per cent on circumstantial evidence of the defendant's guilt. It therefore becomes a situation that is rife for speculation as to how her

killer—the only thing that is proven without circumstantial evidence is the death, which I offered to stipulate that it was death by stabbing and strangulation.

The Court: Does it matter whether these people were total strangers or intimate friends in determining whether this act charged was committed?

Mr. Armstrong: No, it doesn't make a bit of difference, but the thing that the jury has to consider—there are many facets of this case that must be apparent, and the jury must consider all of the considerations that went through the defendant's mind at the time he made the confession to an act which he now claims he didn't do.

[fol. 1109] Why would he make a confession? It is material to know what the status had been between the parties, what the attitude toward each other had been. That is one facet. Another facet is how would a man gain entrance to a place——

The Court: Are you suggesting that one would admit a crime against a friend more readily than he would against a stranger?

Mr. Armstrong: No, that is not the point. The point is that because of a secret relationship—now there are other letters which we will propose in evidence which will indicate that the decedent was using a certain amount of guile, in one letter, as long as we are out of the presence of the jury, "Mother thinks I am writing a letter to Barbara and I must hurry and get this off." It shows what her state of mind was, that while she did one thing, as far as the evidence in the case is concerned, actually she was saying and doing other things to explain, and to that extent to corroborate the defendant's story throughout. And it is only—this is evidence that is not manufactured by the defendant; this is evidence that was produced by the decedent, herself, to show what their relationship was. Otherwise we have only the defendant's testimony as to a relationship, the details of which——

The Court: I assume the People are not going to contradict his testimony regarding that relationship, are you?

Mr. Alexander: I do not intend to. I agree that that was [fol. 1110] the relationship, as far as I can ascertain.

The Court: What does this do, outside of reflecting upon a deceased girl?

Mr. Armstrong: Well, now, your Honor, as far as—if the Court will notice, there are no—these letters are most tender and these letters were written, the Court will notice, after the separation, and there has been a—it is not in evidence as yet, but there had been a bitter divorce fight, and this woman was a free agent to have dates and to go out at this time. This is not casting aspersions on her reputation. This is just showing the relationship between the people; and the point is, your Honor——

The Court: Well, what do these letters add to the defendant's testimony, which is going to be uncontradicted with regard to that relationship? Aren't they just cumulative?

Mr. Armstrong: No, I don't think so, any more than we could object to a second witness testifying to points that a first witness has testified to. Would the Court have held, if I had objected to Lt. Armstrong coming in and testifying that he saw Mr. Stambler make fingerprints, on the point it was just cumulative and could have no materiality? It is the same type of thing. It is corroborative. In other words, even though the People don't believe—even though the People don't oppose us on that particular point, it might well be that the tryers of the facts in view of the subse-[fol. 1111] quent relationship would get the idea, and while it is not implicit in this record, it certainly has been created in the press enough that everyone has seen the turn.

The Court: Let's stick to the record here.

Mr. Armstrong: All right. I'm sorry, your Honor. Sticking with the record, then, the jury might well infer from the evidence in this case the fact that the defendant has been referred to by the decedent's brother and by the officers in his testimony as just a house boy, as far as he was concerned the relationship was one that was all one sided. He had the idea that he was in love with her.

And John Baird, it is true, produced by the defendant, merely as a portion of showing the entire picture, has testified that the decedent had said that she had no interest in him and didn't care at all for this man. She had gone out with him a couple of times and there never had been anything there. That was one side to the facet of their relationship.

The Court: May I point out that you produced the witness, John Baird?

Mr. Armstrong: I am quite aware of it, your Honor, and also quite aware and unsurprised by his testimony. I knew what he would say and I considered it to be relevant to explain all of the conduct of the defendant that will come out and will be produced here to show how he acted as he did and why he acted as he did and corroborative to show [fol. 1112] what Norma McCauley had said.

Well, now, we have heard from Norma McCauley a good deal, it is true, produced by the defendant, but that is not the point. I am not trying to rebut my own evidence. I am trying to show both sides of the picture here, and this is a necessary side. Because if this evidence is excluded, a jury might well conclude, independent of John Baird's testimony produced by the defense—might well conclude that this is some sort of an adoring from afar feeling on the part of the defendant and there was never any relationship here at all. Then we may pose the further question, so what is the materiality of the relationship?

The materiality goes to absence of motive. It is much less likely that the defendant is going to have killed a woman with whom he was in love and professed his love, and to whom love was professed, than it is that he would kill someone where there was no feeling.

Mr. Alexander: Well, of course, history is contrary to that. [fol. 1113] Mr. Armstrong: Well, I beg your pardon, there are isolated cases, but generally speaking a person does not kill one that he or she loves.

Mr. Alexander: Well, we won't go into a philosophical argument over that. Our position is this, your Honor, that the state of mind of the decedent is not material unless it was for the purpose of showing who was the aggressor in a self-defense case, or if it comes in one of the exceptions like the Weatherford case or the Alcalde case. The Alcalde case is cited in the Weatherford case.

The Court: No, it is later.

Mr. Alexander: No, no, the first Weatherford case I am talking about, 27 Cal. 2d 401. The Weatherford case discusses that where a hearsay statement made by the deceased will negative an intent or show an intent or a hearsay statement which might prove lack of motive on the part of the defendant—like in the Weatherford case, the woman that was killed by her supposed landlord made a statement that

she had sold her property to her landlord, and that she was leaving to go to the mountains. There, the court held, that having made the statement that she had sold it, it would be admissible to show that he would have no motive in killing her then, because he owned the property anyway. And certainly it was an admission against interest of property purchased. But this is far, far from anything in the Weatherford case. Her state of mind here is immaterial, [fol. 1114] if the Court please, unless it shows some sort of an intent of some kind.

Mr. Armstrong: My position, your Honor, is substantially what the District Attorney has just been pointing out, that the expressions of affection and feeling shown here in these letters go to show, go to corroborate the existence of the relationship as testified to by the defendant, which, in turn, would show a lack of motive, not just a one-sided relationship.

I agree with the Court, that the other side, that the letters written the other way from the defendant to the decedent would fall ino the self-serving class and would therefore be inadmissible. But the defendant may testify as to the relationship that developed; and to make his testimony credible and believable, I think these are necessary adjuncts to that testimony.

The Court: Suppose the People were to find letters from the deceased to the defendant showing some other attitude other than one of affection, would that be admissible?

Mr. Armstrong: Yes, your Honor. It would be argued against, certainly, if the Court would exclude these; but once these are admitted we would open ourselves to it, just as if I present a witness, if permitted to go outside the realm of the ordinary rules in statements as Mr. Baird went on direct, I understand the rule that I am pretty much [fol. 1115] estopped, closing the door on cross examination. So I would say if the Court permitted letters to come in proposed by the defendant, that the defendant would be estopped from raising an objection that might better be asserted by the defendant than the People, after he himself had allowed the introduction of the letters. And I would certainly knowingly introduce these letters and say to the People, "Produce any letters from the decedent where the handwriting can be qualified and the letters can be qualified

as being from her that they can," because no such letters exist.

Mr. Alexander: May I ask this, and may I ask this through the Court: Is it necessary that these letters be admitted at this time or would it prejudice your case if the Court reserved a ruling at this time?

The Court: Well, before you answer, may I ask, are these just samples of more to come? Are we opening the door to a flood of similar documents?

Mr. Armstrong: No, your Honor, as far as the letters are concerned, what I was trying to do very hastily here, and practically picking them by color of stationery, because I had found a period of time indicated—this is a typical little note that was left in the kitchen; this one with the white and yellow border is one that was written at one period of time before we ran out of that kind of stationery. And this is another one. I only wanted to get representative letters in. I would say no more than this type of note, no [fol. 1116] more than—well, each letter would represent a different type of thing.

Many of these letters represent the same thing, just little notes that were written just before retiring, expressing affection and said nothing else. So I would say no two letters would express the same thing, but other letters would indicate certain facts in them that would establish the time of the letter. Another letter will indicate a certain amount of secrecy, "I must write this now at this time because I have an opportunity to write to you." Showing that the relationship was covert and corroborating the testimony of both the defendant and Jeanne Pollard, the cocktail waitress, who testified here yesterday, that they met at this little out-of-the-way place to show that relationship. Now, I think they are evidentiary. It is a question of weight, but it is not a question of admissibility. Perhaps they are not worth too much. I don't know. But they appear to me, if I were a tryer of fact, I would consider these to be significantly corroborative of what the defendant is saying. And it would answer a possible objection on the part of a juror in discussing the case as to saying, "Well, the only way we know that there was any relationship other than just what the defendant felt for the decedent is what the defendant says. There is nothing else. And this would show that

there was something else. And there is nothing, I don't [fol. 1117] think there even exists in these letters, because she was not that type of person—there is nothing obscene or lewd or immoral per se about anything in any of these letters. They are mostly just very affectionate letters that do demonstrate this state of mind that existed at that time.

I think that it is critically important to the defendant to let the jury know this portion of the story between these people in explaining the entire conduct of the parties toward each other; not just the defendant's conduct, but the conduct of the decedent and why she did certain things that she did, and why she didn't do other things that she did. One of those letters in particular refers to an enforced lack of availability they have to go through for a little while. Other letters point that out. It is representative letters, I would say, a half a dozen of the exhibits of which there are about fifty in all, and no two merely say the same thing.

Mr. Alexander: I still insist that her state of mind is not in issue under the facts of this case, and that these letters cannot be used for the purpose of establishing her state of mind, which is immaterial.

Mr. Armstrong: Under the facts of this case—but the facts of this case will never change if the defendant is precluded from introducing evidence in the case, Mr. Alexander. In the citation that was mentioned, it was recognized [fol. 1118] as an exceptional case to the hearsay rule, and this is the same type of thing being brought in by the defense. It was the state of mind of the decedent. The Court in that case might have said that the state of mind of the decedent could not come in, but we believe that this record should show the state of mind of this decedent, as far as we are concerned.

Mr. Alexander: The state of mind of the decedent became important to show the defendant would lack the motive in committing the crime. She said she had sold the property to the defendant and was going to the mountains. That being the case, he would have no motive in killing her to procure the stuff.

Mr. Armstrong: I say the relationship of these people, the intimate feeling between these people would go toward establishing the lack of motive, and these letters tend to prove that lack of motive.

The Court: The Court has grave doubts as to the propriety of admitting this, but if we must err it must be on the side of admissibility for the defendant. Therefore, I will overrule the objection and these will be marked Defendant's Exhibits I-1, I-5, and I-12 in evidence, with the understanding that the Clerk will prepare an identification number in the back of I-1 so that this part will be illegible.

(End of proceedings at bench.)

[fol. 1119] (The following proceedings were had in open court and in the presence of the jury:)

By Mr. Armstrong:

Q. John, directing your attention to these exhibits, particularly to exhibit marked I-5 in evidence, would you read that aloud, please?

The Court: Counsel, wouldn't it be better to pass it to the jury?

Mr. Armstrong: That is agreeable, your Honor, yes. If we may pass the three exhibits to the jury, I-1, I-5 and I-12.

(Mr. Armstrong passes exhibits among jurors and the jurors read same.)

The Court: Ladies and gentlemen of the jury, do not discuss the case among yourselves nor talk to anyone about it, nor allow anyone to talk to you about it. Do not form nor express any opinions or conclusions about the case until the matter is finally submitted to you.

We will take up again at 10:00 o'clock tomorrow morning.

(Whereupon at 4:45 this date an adjournment was taken to 10:00 o'clock, Thursday, December 1, 1955.)

[fol. 1119a] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

Santa Monica Dept. B Hon. Stanley Mosk, Judge

[Title Omitted]

Transcript of Proceedings—December 1 and 2, 1955

[fol. 1120] The Court: All right. The jury is present. Mr. Crooker was on the stand.

Mr. Armstrong: Yes, resume the stand, please, John.

JOHN RUSSELL CROOKER, JR., having been previously sworn as a witness in his own behalf, resumed the stand and testified further as follows:

Direct examination (Continued).

Q. John, just to perhaps go back a moment, with what frequency on an average would you say that during the time you were living at your apartment on Marathon, Mrs. McCauley left these notes or letters in your apartment, on an average?

A. It is very difficult for me to make an average; perhaps once a week—some weeks she did not leave one.

Q. I want to show you a letter here: I will show you here a letter on blue stationery and envelope attached, addressed to John Crooker, Jr., 5124 Marathon, Los Angeles 38, California, bearing a New York postmark, October 4, 1954. I will ask you to read that letter to yourself please.

[fol. 1121] (Witness peruses letter.)

Mr. Armstrong: For the record, this is Defendant's Exhibit I-3 for identification.

Q. And I will show you another letter on the same type of stationery, addressed to John Crooker, Jr., 5124 Marathon, Los Angeles, California, also postmarked New York, October 13th; and it is Defendant's Exhibit 15, Defendant's

Exhibit I-15 for identification, and ask you to read that letter to yourself.

A. (Witness peruses letter.)

Q. Do you recognize the handwriting on Exhibit I-3 for identification?

A. Yes.

Q. Do you recognize the handwriting on Defendant's Exhibit I-15 for identification?

A. Yes.

Q. Whose handwriting are those letters in?

A. Norma's.

Q. As to the address on the envelope, do you recognize the handwriting there on the envelope attached to each of those exhibits?

A. Yes.

Q. Whose handwriting is that?

A. Norma's.

Mr. Armstrong: Your Honor, I would ask that Defendant's Exhibit I-3 and I-15 be admitted in evidence. (Hand-
[fol. 1122] ing letters to the Court.)

(Court perusing letters.)

Mr. Armstrong: While the Court is examining that, I would like to have you read Defendant's Exhibit I-2 for identification.

A. (Witness perusing letter.)

The Court: These will be marked Defendant's Exhibit I-3 and I-15 respectively, in evidence.

Mr. Armstrong: As to this last one that I gave you, do you recognize the handwriting in this letter?

A. Yes.

Q. Do you recognize the—well, there is no handwriting on the envelope—in which handwriting is that?

A. Norma's.

Q. I will ask that this be marked Defendant's Exhibit I-2 in evidence. That is the extent of the offerings in evidence of these exhibits at this time.

The Court: Be marked Defendant's Exhibit I-2 in evidence.

By Mr. Armstrong:

Q. John, I would like you to examine Defendant's Exhibit H, and direct your attention to the pages in Defendant's Exhibit H from 1 through 17, and ask you just to examine those generally, and I will ask you if you do recognize the handwriting there?

A. Yes.

[fol. 1123] Q. Whose handwriting is that?

A. Norma's.

Q. That was Norma McCauley's handwriting?

A. Yes.

Q. Directing your attention to the next page in the book, do you recognize that handwriting on Page 18?

A. Yes.

Q. Whose handwriting is that?

A. Fred Chel's.

Q. That has been previously identified by the witness Chel as his tort notebook, and do you recognize it as such?

A. Yes, I do.

Q. You used this in reference to your studies while you were in law school?

A. Yes, I did.

Q. This is the notebook?

A. Yes.

Mr. Armstrong: I will ask that Defendant's Exhibit H be received in evidence, if the Court please.

The Court: It will be marked Defendant's Exhibit H in evidence.

Mr. Armstrong: If I may pause here, your Honor, may I have the last three exhibits and give them to the jury at this time for their perusal? I think they are illustrative of the particular points we have covered, and before I go to [fol. 1124] the other points I would like to have them read. (Jury peruses letters.)

The Court: Very well. Your next question, Mr. Armstrong.

By Mr. Armstrong:

Q. Now John, you have told us yesterday about the fact that you had an arrangement with Mrs. McCauley where you were to be paid money in exchange for your work.

Now directing your attention—and then later with the Thompsons the same type of thing. Directing your attention to the time after you had left both Mrs. McCauley's employ and the Thompsons' employ, did you after that time have occasion to receive money from Norma McCauley?

A. Yes.

Q. And what type of money transactions did you have, and when did you have them after the time you left the Thompsons'?

A. Well, for example, when I first left the Thompsons' I was at that time, as I recall, almost completely without funds, and until I procured employment—that would be in the month of June, 1954—Norma gave me sums of money. I can't tell you how much.

Q. Can you approximate it?

A. During that period I would say easily $100.00, because I paid for my meals. I paid for my rent, from the money.

[fol. 1125] Q. That was in June, 1954. Then when was the next time that she gave you any sum of money that you recall?

A. Then in July of that year, I had been considering getting employment and going to law school at night, which would require a car because of the travel and the distance, and Norma loaned me something in the neighborhood—well, in fact, it was $400.00.

Q. $400.00?

A. Yes.

Q. And do you know where she obtained that particular money? Do you have knowledge of your own as to where that money came from?

A. Yes.

Q. What was that?

A. She owned two Canadian bonds, and she had had them for some time, and at this time she cashed one of those bonds and on the day that she cashed the bond she opened an account at the Citizen's Bank in Westwood, and while doing it gave me the $400.00 for the down payment on the car.

Q. Which car was that?

A. My Plymouth.

Q. And what year was that car?

A. '51.

Q. Then after that was there any other time that she gave you a sum of money after July, '54?

[fol. 1126] A. Yes. When I did secure employment in September of that year—during the interim between employments, she gave me, during that month, twice gave me sums of money that were appreciable.

Q. What do you mean by "appreciable"?

A. I mean to say over $100.00. As I recall, the first time was something like $150.00, or something like that. I can't recall the exact amount, and then later in the month I think she also gave me a comparable sum.

Q. And after that, when was the next time that she ever gave you any money?

A. During the Christmas season of that year.

Q. This would still be '54?

A. That's right, as in the previous Christmas she gave me a sum of money. I don't have any idea how to tell you how much it was, for Christmas gifts.

Q. Well, was it as much as $20.00?

A. Oh, yes.

Q. Was it as much as $100.00?

A. I would like to estimate it between $50.00 and $100.00. It is almost impossible for me to do it.

Q. Now in June, 1955, did Norma give you any money at that time, during that month?

A. Yes.

Q. And what sum of money did she give you then?

A. Something in the neighborhood of that figure that has [fol. 1127] been used, $300.00, something between two and three hundred dollars.

Q. You don't remember precisely how much?

A. No, I don't.

Q. Was there any particular purpose for that money other than just for your living expenses or anything like that? Had there been a discussion about what that money was going to be used for?

A. Yes.

Q. What was that?

A. I was again between employments. I had no employment at that time, and in addition to that the final examinations at school and the bar examination—we had considered

the advisability of my not spending too great an effort at that time to get employment until those tests were over, and that money was for that purpose.

Have I made myself clear?

[fol. 1128] Q. Was there any discussion about your going home to Maine?

A. Yes. However, that wasn't at the same time as I received the money from her.

Q. I see. Now, the moneys that you have told us about that you received from Mrs. McCauley from time to time in 1954 and 1955, what was the understanding between yourself and Mrs. McCauley? Were these loans or gifts, or what were they supposed to be?

A. Well, I have called them loans. They were not loans in any technical sense. We talked about our differing financial status, the fact that she did have the means to be of help to me, and I told her that I did not want any obligation to grow out of these money transactions, either on her part or mine, as respected our relationship, and I would tell her in the event that our plans with respect to the relationship are not materialized, "I will want some day to repay the help that you have given to me."

Q. As far as at the time that the money was received, you didn't have a repayment plan of so many dollars a month like you might have with a bank or a finance company?

A. No. I think the only time that I even made any statement to her—I think when she loaned me the money for the car I even wrote her out a little piece of paper concerning that $400, and she tore it up.

Q. I see. All right. In addition to these things that you [fol. 1129] have told us about, did you ever have occasion to give her money?

A. Yes.

Q. And how would that occasion come about?

A. Well, I just mentioned that she would leave money in my apartment, for example, when she used to come by. These amounts of money would be $5.00 or $10.00, something like that. By the same token, Norma had a—I don't know if you would call it a habit—she would not get to the bank, and she would be out of funds, and if I happened to have money, I would give her money.

Now, that type of transaction has occurred throughout the two years, even when I was in her home working for her, and—well, I have given her upwards to $25.00 or $30.00 in that type of transaction.

Q. If she were out of money just because she hadn't been to the bank and didn't happen to have any money on her person, would she make a note of that to repay you on the next occasion that she saw you?

A. We didn't, I didn't keep account of this at all.

Q. As to gifts, did you make any particular gifts, particularly jewelry, to Norma?

A. Yes.

Q. What type of jewelry did you give Norma?

A. For Christmas of 1953 I bought a ring. It was a little finger ring, silver ring with sapphire — rather blue and [fol. 1130] white sapphire, and I gave her that ring on Christmas of 1953.

Q. And did she wear that ring continuously when you observed her subsequently?

A. Yes, she wore it all the time.

Q. Did she ever stop wearing it that you know of? Did you see her after she stopped wearing this ring?

A. No, she was wearing it the last time I saw her on the 3rd of July.

Q. Directing your attention to the 2nd of July, that would be Saturday, and particularly the evening of the 2nd of July, do you recall where you went on that evening?

A. Yes.

Q. Where did you go?

A. Well, I went that afternoon — a friend of mine at Southwestern invited me to his home for a barbeque dinner and to play cards.

Q. You went there?

A. Yes.

Q. Whose home was that?

A. Bob Swaffield's home in Burbank.

Q. Spell the last name for the reporter.

A. S-w-a-f-f-i-e-l-d.

Q. Who else was there?

A. Bob's wife and Bob's sister.

[fol. 1131] And yourself?

A. Yes.

Q. There were four of you there?
A. Yes.
Q. How late did you play cards?
A. 4:00 o'clock in the morning.
Q. That would be Sunday morning, then?
A. Yes.
Q. Saturday night?
A. Yes.
Q. Sunday morning?
A. Yes.
Q. Then did you return home from there?
A. Yes.
Q. How long did you sleep on the 3rd?
A. I think I got up about 10:00 o'clock; it was 9:30 or 10:00 o'clock, about that time.
Q. On the 3rd—then this is on the 3rd, did you have a conversation with Norma during the daytime hours of the 3rd?
A. Yes, I did.
Q. Approximately what time was that?
A. As nearly as I can fix it, about noon—now, noon and early afternoon—I had two conversations with her.
Q. What time was the other one?
[fol. 1132] A. As I say, about that time; it was not an interval of over an hour between the conversations.
Q. In these two conversations were any arrangements made between yourself as to what you were going to do subsequently?
A. Yes.
Q. What was said about the subject of what you were to do or not to do?
A. I had written a letter to her. That was her reason for this conversation.
Q. Did she call you or did you call her?
A. She called me on one of these calls and I called her on the other.
Q. Which one did she call you on, the first one or the later one?
A. The first call.
Q. She called you, and an hour later you called back?
A. I don't say an hour later; I can't fix the time that closely.

Q. Anyway, what arrangement was made, then, about what you were to do subsequently?

A. I told her that I wanted to talk with her about what she had hold me, and we arranged that I would see her on that evening.

Q. All right, then, did you go to—that was about noon. What did you do for the rest of the day on the 3rd of July?

[fol. 1133] A. Sunday, the 3rd, I had a nap that afternoon about, I think, 6:00 or 7:00 o'clock, about, that evening, and I left, and I went to a theater on Hollywood Boulevard, and I can't be sure what theater it is—the Academy Theater or the theater directly across the street, and I saw the picture Fox Fire, or the picture Battle Cry.

Now, my reason for the—or, rather, I will say this—I had seen both pictures in that vicinity of time and I don't know if on Sunday I saw Fox Fire or whether I saw Battle Cry, but I had seen both.

Q. What time did you get out of the movies?

A. I think about 9:00 or 9:30.

Q. When you got out of the movies about 9:00 or 9:30, where did you go from there?

A. I drove to Bel Air.

Q. When you got to Bel Air, where did you go in Bel Air?

A. I drove up Chalon Road and up Somera Road, and turned around and drove back down Somera Road and parked on the dead end of Chalon Road at its junction with Somera Road.

Q. You parked your car there, approximately what time was it by now, do you know?

A. As nearly as I can estimate——

Q. Something like 10:30 or 11:00 o'clock p.m.?

[fol. 1134] A. Yes.

Q. And on the 3rd of July?

A. Yes.

Q. You parked your car. Where did you go from there?

A. I walked up Somera Road. That is uphill toward Norma's home.

Q. When you got up there what did you do?

[fol. 1135] A. I walked past her home, and there is a vacant lot just above the garage. That would be just west—is it—no.

Q. If it is on the left, it is west. If it is on the right it is east, referring to People's Exhibit Number 9 in evidence.

A. It would be just west of the garage, there is a vacant lot; in fact, it is right adjacent to the——

Q. Where did you go from there?

A. Walked across that lot toward — may I show the direction?

Q. Surely.

The Court: Use the pointer.

A. The lot is right in this area; it is right adjacent to the house and to the McCauley lot. This is Somera Road, so this would be—this would be the canyon down here. I walked in this direction toward the canyon. There is a bank in there. In other words, this lot and this lot and all the lots all go off in a banking.

Q. Were there any lights burning in the home at that time that you observed?

A. The maid's light was on, and I saw a maid's light go out here as I was driving down after I had driven up on Somera Road, not when I was walking up the road.

Q. When you refer to the maid's light, you are referring to the light in what room?

[fol. 1136] A. Here.

Q. In the room designated "maid's room" on People's Exhibit Number 9?

A. Yes.

Q. You say you saw that later, saw it go out?

A. Yes.

Q. At that point of time what did you do?

A. There is a little tree right in the corner of the McCauley lawn.

Q. Would you indicate where that is on the diagram?

A. Well, of course, this distance of lawn I cannot tell, but it is right on the edge of the lawn and right on the edge of the banking, and right about there.

Q. If you would indicate as nearly as possible where about this tree was?

A. Assuming that this is the end of the lawn, in other words, that the bank starts there and goes down, the tree would be right about there.

Mr. Armstrong: We will make a mark on People's Exhibit Number 9 here, and we will indicate "tree", and we will mark this D-1 on People's Exhibit Number 9, if we may. (Marking on diagram.)

A. Now, when I say that is the tree, it is a little scrub tree that almost hangs out over the bank.

Q. All right; anyway, what happened then?

A. I stood by that tree and waited, and the next thing [fol. 1137] that actually happened was that a car drove up Somera Road, drove slowly past Norma's house and turned around and came back and stopped. Assuming that this is the edge of the McCauley lot, well, it would be up here; stopped and headed down the hill, which would be in this direction, and just above the driveway of the McCauley garage.

Q. That is where the car stopped and it remained there for some time?

A. Yes, I would say in the vicinity of three-quarters of an hour.

Q. During that three-quarters of an hour what did you do?

A. I just got up on that branch of the tree. The tree has a rather heavy branch. It is about two or three inches in diameter, as nearly as I can recall, and tried to get a view of that car.

Q. Were you able to see what kind of car it was?

A. Not right then, no.

Q. Did you later see what kind of car it was?

A. Yes, when it started to roll down the hill, I walked across the lot and did get a pretty good view of the car. I think it was a Ford. I think it was grayish or bluish in color, I am not sure of that color.

Q. While you were trying to get a view of this car from this tree, did anything happen at that time?

A. Yes.

Q. What happened then?

[fol. 1138] A. I fell.

Q. And how did you fall; what made you fall?

A. I just didn't have a good enough footing. I tried to move and I slipped off the tree—actually not falling. I went over my left side like this (witness indicating), and when

I landed I landed on my hands and on my—just went off—my feet were actually in the vicinity of the tree.

Q. What type of ground or lawn or ground or whatever dirt was underneath that tree?

A. Well, actually that part of the grounds is not kept; it is shale, it is rocky, and branches and that type of thing in that area of the grounds.

Q. And when you fell out of this tree did you hurt yourself in any way?

A. Yes, I hurt my hand.

Q. Can you indicate to us where you hurt your hand; just show us on your hand.

A. On these two fingers of my hand, but mainly this finger (witness indicating).

Q. Hold your hand up so we can see what you are indicating; point out what you are indicating.

A. This one and this one.

Q. Indicating the little finger and the ring finger of the left hand, is that right?

A. Yes.

[fol. 1139] Q. What part of your fingers were hurt; indicate again the approximate places where your fingers were hurt.

A. There were a lot of marks on this hand. The main thing, I think, was this knuckle, and some on the side of this finger and some on the bottom of this finger and some on the end of it.

Q. In any event, when did you discover you had hurt your hand?

A. Well, actually then I realized I had hurt my hand, but I didn't realize what its nature was. I just picked up and when I got up I took my handkerchief and just wiped my hands and didn't think anything about it.

Q. And did your hand bleed any?

A. Not particularly, no. My—it did bleed some, because my handkerchief got covered—I say got covered—got blood on it, but it didn't bleed drops of blood, for example.

Q. All right. Then after you had fallen out of this tree, what did you next do?

A. I watched a car go down Chalon. You can see it go down Chalon.

Q. After the car had left, what did you do?

A. I went back to the end of the garage, looked out on Somera Road, and looked—walked right across the garage like this (indicating), and looked in the maid's room to see that the maid's light was out, and tried to establish that [fol. 1140] she was asleep or at least asleep — that she wasn't up.

Q. Having satisfied yourself that that was so, what did you do next?

A. In an area of time, I spent something like an hour, an hour and a half, doing just that very type of thing. I didn't want to go in the house.

Q. Did you at any time on this night go inside the house?

A. Yes.

Q. How did you affect an entry?

A. We had an arrangement——

Mr. Alexander: I will ask that that be stricken.

The Court: It may be stricken.

By Mr. Armstrong:

Q. Tell us how you effected an entry, without saying what was done beforehand, or anything else.

A. This patio (indicating) has a sliding door right here. There is a screen on the outside, and——

Q. (Interrupting) Indicating the sliding glass door that is portrayed on People's Exhibit 9 between the area marked "covered patio" and the area marked "dining room"?

A. This door has little locks next to the jambs on the lawn side (indicating).

Q. Indicating the south side of the door, it has little locks——

A. (Interrupting) They are fairly inconspicuous. They [fol. 1141] lift like that (indicating), and Norma arranged that those would be left open.

Mr. Alexander: I will ask that that be stricken.

By Mr. Armstrong:

Q. I will submit that that be stricken. In any event, were you able to open the door from the outside?

A. Yes.

Q. And then you went inside the house, and when you got inside the house, where did you go?

A. R[illegible]nto the kitchen and dining room area.

Q. All right. Then where did you go from there?

A. Wait a minute. I am not pointing the right way. Actually, you come through the kitchen, and I went in this direction (indicating).

Q. Indicating up into the kitchen. How long did you stay there in the kitchen?

A. Well, in that area of the house I was in that area about 15 or 20 minutes.

Q. Where did you go from there?

A. I went to the little—there is a little furnace room which is right in here (indicating). They call it the heater room.

Q. Indicating the part of People's Exhibit 9 that is indicated "heater room", which is at the east end of the area designated "breakfast bar" on the other side of the wall. All right, how long did you stay there?

[fol. 1142] A. I was going to wait there, but that isn't what Norma had told me——

Mr. Alexander: (Interrupting) I will ask that that be stricken.

Mr. Armstrong: Again try to keep from saying anything Norma told you. Tell us what you did and where you went.

A. I went down the hallway to the children's room.

Q. When you say "children's room", you are referring to the room marked "nursery"?

A. May I go back just a moment?

Q. All right. Did you do something else before that?

A. In the kitchen I smoked there, and I also got a glass of water at the kitchen sink there.

Q. Did you carry the glass of water with you?

A. No, I did not. I left that glass right there.

Q. All right. Then from there you went where?

A. I went to the children's room.

Q. Which is indicated on People's Exhibit 9 as "nursery"?

A. Yes.

Q. When you got to the children's room, was the children's room occupied by anyone?

A. Yes, it was.

Q. Who was in the children's room?

A. The three children.

Q. That is, Craig, Kevin, and Kirk?

A. Yes.

[fol. 1143] Q. And were they asleep or awake or what?

A. They were asleep.

Q. And were they in the beds as they are marked here (indicating)?

A. Yes.

Q. Was this the approximate position of the beds at that time? (Indicating)

A. You can't approximate the position of those beds. You see, the beds are not on casters. The floor is linoleum and heavily waxed and the beds move very easily and the children are very active and they move around.

Q. You say the beds are not on casters?

A. No.

Q. What is at the base of the legs of the beds?

A. Just these little—just wood. They may have those little steel things on the bottom, those little—whatever you call them, on the very bottom. They may have those little steel—what do you call them? I don't know how you describe them.

Q. They are not a wheel, in any event?

A. Not a wheel.

Q. Some sort of a little button on the bottom?

A. Yes.

Q. Were the beds in that approximate position?

A. They are always in that approximate position.

Q. As far as the lengthwise of the beds go and the crosswise of them go?

[fol. 1143-a] A. The three of them were placed side by side.

The Court: We will take the morning recess at this time. Do not discuss the case among yourselves nor talk to anyone about it, nor allow anyone to talk to you about it. Do not form nor express any opinion or conclusions about the case until the matter is finally submitted to you.

We will take a ten-minute recess.

(Short recess.)

[fol. 1144] The Court: The jury is present. You may continue.

By Mr. Armstrong:

Q. Now, John, speaking again of July 3rd, the evening hours that you have testified that you were up at the McCauley residence, and going back for a moment to the time that you were outside of the residence, did you notice anything unusual about any lights in the house, or did you notice anything about lights?

A. Yes, while that car was sitting there——

Q. (Interrupting) That is the car you have referred to as observed on Somera Road?

A. That's right, because I thought someone was going to get out of the car, and, in fact, heard the door click, but didn't hear it slam or anything, so I didn't think that anyone did get out of the car.

Mr. Alexander: Your Honor, I will ask that this be stricken. May I ask your Honor to direct this witness to answer the question?

The Court: That is stricken. Mr. Crooker, let us not have your mental state discussed. Just answer questions directly. Read the question, Mr. Reporter.

(Whereupon the following question was read by the reporter:

"Q. That is the car you have referred to as observed on Somera Road?")

By Mr. Armstrong:

Q. The answer to that was yes?

A. Yes.

[fol. 1145] Q. While the car was out there, did you observe anything about the lights in the house?

A. Yes.

Q. Tell us what you observed, without making any reference to what you thought as you observed?

A. The back entrance light——

Q. (Interrupting) Indicate where you mean.

A. Right in here (indicating), there is a covered area which is open but covered, that goes between the garage and the kitchen.

Q. Indicating the area between D-9 and D-10 on People's Exhibit 9.

A. Now, this light (indicating), was turned on.

Q. Where is this light? What kind of a light is it? Is it a porch light or an inside light, or what?

A. As a matter of fact, I cannot recall whether this light is right up in the middle of that place. At any rate, it lights up this area right in here (indicating).

Q. What did you see with respect to that light?

A. It turned on and then it turned off almost—just at the same——

Q. (Interrupting) It was on momentarily and it was off again?

A. Yes.

Q. Did anything else happen with respect to that light while you were outside and while this car was up here [fol. 1146] (indicating)?

A. No.

Q. Now, going back to where we were before the recess, you state you had gone into the children's room. This is the evening of July 3rd?

A. Yes.

Q. Sunday. Can you approximate the time it was that you went into the children's room?

A. I'd say about 2:00 or 2:30 when I actually got into the children's room.

Q. A.M.?

A. That's right.

Q. Now it is July 4th?

A. Yes.

Q. At 2:00 or 2:30 a.m. When you went into the children's room, where did you go in the children's room?

A. I went to this closet marked F on this diagram (indicating).

Q. Indicating closet F in the nursery. When you got to the closet, what did you do?

A. I opened the door and got into the closet and saw that I could be—I could stay in the closet.

Q. And then did you stand there, did you sit there, or what did you do in the closet?

A. Well, I got out of the closet and wanted to smoke, and found a glass on the play shelf and did smoke by the window [fol. 1147] which shows out on the children's play yard.

Q. Was this glass that you discovered in the children's room, similar or the same glass that has been marked People's 30, I believe—anyway, the one that has been introduced by the People in this case?

A. Yes.

The Court: People's 30.

Mr. Armstrong: People's 30 in evidence in this case?

The Court: Yes.

Mr. Armstrong: All right.

Q. Then, how long did you remain in this closet?

A. I was in and out of the closet until about a quarter of 5:00.

Q. And while you were in and out of this closet, did you hear any voices in the house or any noise in the house?

A. In the house?

Q. Yes.

A. Well, yes, twice I did.

Q. And approximately what time, from the time that you got in the closet, did you first hear any noise or voices anywhere in the house?

A. First may I say I think I heard the first sound——

Q. (Interrupting) When was the first time——

A. This was between the 2:00 or 2:30 that I got there and about a quarter of 4:00.

[fol. 1148] Q. All right. Did this voice you thought you heard, did it appear to be a man's voice or a woman's voice?

A. It wasn't a voice. It was a sound, and I thought someone came in the room at that time.

Q. I see. You were in the closet at that time, is that right?

A. That is correct.

Q. Then what was the next sound you heard?

A. I thought that someone came in the room after a quarter of 4:00.

Q. Did you ever, while in that area, hear any voices any place else in the house?

A. No.

Q. When did you finally leave the area of the closet and go some place else in the house?

A. After Norma came home.

Q. What time was it that Norma arrived home?

A. About a quarter of 4:00.

Q. And what made you aware of the fact that she had returned home?

A. I heard her car—I heard the cars come up—I heard the sound of the car going into the garage, heard the front door, later heard the front door close.

Q. All right, and then after—when did you establish that it was Norma McCauley that had made these sounds [fol. 1149] or—when did you establish that Norma McCauley was in the house?

A. When she came into the children's room.

Q. And she came into the children's room, and approximately what time was this?

A. About a quarter of 5:00.

Q. All right. When she came in the children's room, did she say anything or did you say anything?

A. Yes. I asked her why it was so late. We thought——

Q. (Interrupting) Never mind.

A. Excuse me.

Q. Again, I will caution you.

A. Excuse me.

Q. Without saying what was said, did you have a conversation in the children's room?

A. That isn't where we had our conversation.

Q. Did you have any conversation at all in the children's room?

A. Yes.

Q. Then, after you had the conversation in the children's room, did you go some place else in the house?

A. Yes.

Q. Where did you go?

A. To Norma's bedroom.

Q. Which is indicated as the bedroom—which has "Bedroom" down on People's Exhibit 9.

[fol. 1150] What did you do when you got in the bedroom. Did you stand or sit or recline, or what?

A. Both, standing and sitting.

Q. Where did you sit down when you became seated in that room? Where did you sit down?

A. I was seated on the chaise lounge with Norma part of the time, and seated on the bed part of the time.

Q. This time that we are talking about, are the early morning hours of July 4th, is that right?

A. Yes.

Q. Then, did you have a conversation at that time?

A. Yes.

Q. In this conversation you had at that time was anything indicated to you—Strike that.

Was anything said in this conversation by Mrs. McCauley that was unusual or different than things that you had heard Mrs. McCauley say in previous months of your association?

A. Entirely, yes.

Q. In this conversation did the words that she used at this time express a particular feeling that had not been expressed in conversations during the past months?

A. Yes.

Q. How long did this conversation last, approximately?

A. There in the bedroom?

Q. Yes.

[fol. 1151] A. May I answer the question by telling you that I left the house about 6:00 o'clock.

Q. Were you any place before you left the house; did you spend any appreciable time any place else then in the bedroom?

A. Yes.

Q. Where else did you spend any time at all?

A. In the kitchen.

Q. How long did you spend in the kitchen?

A. Well, we were probably in that area of the house fifteen minutes.

Q. Was that the last fifteen minutes before you left the house or was that in the middle some place?

A. Yes, it was toward the latter part of the conversation.

Q. Going back to the conversation that was had while you were still in the bedroom, will you tell us what the conversation was?

A. In the bedroom?

Q. Yes.

A. I can tell what it was?

Q. Yes, what did she say and what did you say?

A. Oh. She told me that she had been threatened. That someone knew about our relationship and about her operation.

Q. All right, and what else was said?

[fol. 1152] Mr. Alexander: Just a moment, if the Court please. I ask that that be stricken out as purely hearsay, incompetent, irrelevant and immaterial.

Mr. Armstrong: In support of the question——

The Court: Approach the bench, please.

COLLOQUY BETWEEN COURT AND COUNSEL

(The following proceedings were had at the bench outside *outside* of the hearing of the jury:)

Mr. Armstrong: In support of the question, your Honor, and the line of this inquiry as respecting this conversation, it is anticipated, and I may make this by way of offer of proof, Mrs. McCauley at this time expressed to the defendant fears for her personal safety and fears in respect to her situation as respected the custody of her children, and at this time she made a request to the defendant not to come around her house, not to see her any more from that time forward until she would again communicate with him.

The materiality of this, it will develop, if the Court please, in explaining the defendant's subsequent actions which were done in the light of the things that had been communicated to him in this conversation, and all the reasons for the things that he did, and the reasons for the state of mind that he was in at the particular times, specifically the next evening, and the critical hours that the evidence establishes must have been the hours during which the murder was committed.

[fol. 1153] That is the materiality. Now, as far as the legal basis, I submit that the question is an admissible type of inquiry in that it goes to show to the tryer of the facts those things that she said, and goes to show her state of mind as to that, which, in turn, affected the defendant's state of mind. And this would go along on the same point that we discussed previously in the trial on two or three occasions, to explain the probability or improbability of the conduct of herself on subsequent occasions, what she would or would not have done in the light of her expressed state of mind.

Mr. Alexander: The purpose, as I gather it, is to show her

state of mind and how it affected his state of mind, is that what you mean?

Mr. Armstrong: That is true.

Mr. Alexander: He can testify to his state of mind but I don't think that he can testify to her state of mind.

Mr. Armstrong: If she can't testify to her state of mind, your Honor, the foundational question there that I was trying to ask, that had been answered and are in the record, are questions indicating that the type of thing she was expressing to him is something inconsistent with previous expressions that she had made, and so it showed what she was thinking, and her state of mind at that time. I believe that there are decisions that show that the state of mind—in fact, [fol. 1154] I previously cited several of them to the Court, that the state of mind of the decedent is admissible in a murder prosecution, to show her reasons for doing what she would have done, or lack of reason for doing something else.

Mr. Alexander: Are you talking about abortion murder cases where the decedent made a statement she thought she was pregnant, or said she was pregnant?

[fol. 1155] Mr. Armstrong: Most of the cases arise in that particular type of situation, it is true, but the principle is not confined to abortion murder.

Mr. Alexander: It is admitted for the purpose of showing she believed she was pregnant.

Mr. Armstrong: Yes, that's right, it is admitted to show state of mind. It doesn't matter that it is admitted in abortion murder cases for that purpose; it is admitted to show the decedent thought she was pregnant, and actually, no magical exception to the hearsay rule, and more broadly stated we can find cases that hold the decedent is allowed the showing of the state of mind where she conducted herself in a certain manner.

Mr. Alexander: This goes to introduce a suspicion of motive on someone else's part to commit this crime, which is not admissible, if the Court please.

Mr. Armstrong: No, your Honor, that is not the purpose for which it is addressed. The evidence will further show, and I will tell the Court this much in advance, that the defendant on the next night, because of the things that he had observed already on this night, and because of the things Mrs. McCauley told him on this night, stationed him-

self in a vacant house where Mr. Baird testified on previous occasions, where he had been, at a vantage point, watching the house for many hours until John Baird came home.

This is the reason for the unusual conduct, because of [fol. 1156] things Norma told him, and it ties in with other testimony that, if it is not allowed in, it would be practically impossible for us to explain to the tryer of the facts why he had stationed himself in such a place at such a time, knowing Mrs. McCauley to be absent, as the evidence will also show, and that he was aware of the fact that she was not at home during this time. So if he doesn't know what was going on in her mind, as communicated to him, and unable to show his state of mind, then we can't explain this subsequent conduct. While incidentally it might show a motive in someone else, it is not submitted for that purpose.

Mr. Alexander: I still feel, if the Court please, it is absolutely immaterial. It is not an exception to the hearsay rule and it is absolutely hearsay, and, if anything, it tends to show some motive or suspicion of motive on someone else.

The Court: The only thing that occurs to me, if, as Counsel says, the next night he is going to testify to some act that is unusual or bizarre, I just wonder if he couldn't be asked, then, "Why did you do that?" And in explanation thereof he could get back to this very same conversation.

Mr. Alexander: Maybe you're right—we will withdraw the objection; let it go.

The Court: Objection overruled.

[fol. 1157] (Proceedings resumed in open court before jury.)

Mr. Armstrong: Repeat the pending question, please, and the answer.

(Whereupon the reporter read as follows: "Q. While you were still in the bedroom will you tell us what the conversation was?"

"A. In the bedroom?

"Q. Yes.

"A. I can tell you what it was?

"Q. Yes. What did she say and what did you say?

"A. Oh, she told me that she had been threatened. That someone knew about our relationship and about her operation.")

The Witness: A. (Continuing) She said that they wanted money, that they wanted a great deal of money, and that she didn't have it. She didn't know how she could get it. That she didn't know what she could do.

She said that they had told her if they didn't get the money that they were going to ruin her.

Q. She did not identify this "they" in any way?

A. No. In fact, I tried to get her to tell me who "they" were.

Mr. Alexander: That has been asked and answered, if the Court please, and I ask that it be stricken out.

The Court: The answer "no" may stand. The rest may [fol. 1158] be stricken out.

By Mr. Armstrong:

Q. Then what further was said—what else was said by her to you?

A. I asked her how they found out about us. She said she didn't know. She said that she had—that they had known about us for some time.

Q. All right, what else was said?

A. She told me that she had been trying to make me understand that I should stay away. She had tried to minimize seeing me or letting anyone know that she had any contact with me; and now she had to tell me herself that I should stay completely away from her. I shouldn't see her, call her, write her, or have any contact with her.

She told me that she was very much afraid of things which I had in my apartment which could be identified with her, the furnishings, the letters, the notes, the poems, the pictures, everything. She wanted me to get rid of all those things, and I told her I didn't want to do this.

I asked her if she had told anyone about it. Why didn't she tell her mother? Her mother would understand. Of course we both knew——

The Court: Just answer what——

A. Excuse me. She said, of course, her mother was away and that she couldn't tell her and she didn't want to, anyway.

[fol. 1159] Q. Was there anything else said along these lines in this conversation, along the lines you have just been telling us about?

A. She made me promise to stay away from—to do what she wanted me to do; not to have any more contact with her.

Q. Is that the substance of that conversation in the bedroom?

A. We talked just momentarily. She gave me a list of employment possibilities. We looked for them. Then when we were going out she was going to give me some meat to take with me. We didn't take it, and I left.

Q. Then when you left the McCauley home, this would be in the early morning hours of July the 4th; you previously testified it was about 6:00 a.m.?

A. About that time, yes.

Q. Where did you go from there?

A. Walked back down the hill to my car on Chalon Road.

Q. And this junction of Somera Road and Chalon Road you tell us about is approximately how far from the McCauley residence?

A. Maybe two or three blocks.

Q. All right. Then you got in your car and where did you go?

A. You want me to describe the route?

[fol. 1160] Q. No, just where was your destination; where did you next stop your automobile after you started again?

A. Went to my apartment.

Q. You went to your apartment. After you got there, what did you do?

A. Well, I went to bed.

Q. All right now, what time—now, this was in the morning of July the 4th. How long did you stay in bed on July the 4th; how long did you sleep then, or when did you awake, in other words?

A. I slept about three hours. I think it was about 7:00 that I went to bed, and I got up about 10:00 o'clock.

Q. When you got up at 10:00 o'clock, what did you do—oh, let me strike that out.

When did you leave your house?

A. About 2:30, about 3:00 o'clock that afternoon.

Q. When you left your house, did you get in your car?

A. Yes.

Q. And go someplace?

A. Yes.

Q. Where did you go?

A. To Bel-Air.

Q. Now we are talking about the afternoon of July 4th, is that right?

A. Yes.

Q. You went to Bel-Air, and where did you go in Bel-Air?

[fol. 1161] A. I drove up on Somera Road.

Q. And did you see anything or observe anything as you drove up there?

A. I saw the children on a neighboring lawn.

Q. That is the McCauley children?

A. Yes.

Q. Did you stop there?

A. No.

Q. Then where did you next go?

A. I drove back down the hill and parked for a little while on that dead end of Chalon.

Q. All right. Then w ere did you go?

A. Then I drove around on the other side of the canyon past the Thompson home.

Q. Which is on what street?

A. Which is on Stradella Road.

Q. Did you observe anything at the Thompson home?

A. Yes, there were bathers there.

Q. Around the pool?

A. Yes.

Q. Then where did you go from there?

A. I continued on up Stradella Road, and there is a dirt turn-off on Stradella where I turned off there and parked, so that I am now facing the canyon, facing Chalon Road, which gives a view of the hill going up Somera Road and Chalon.

[fol. 1162] Q. How long did you remain there?

A. Until about—I approximate it at 4:30.

Q. 4:30 in the afternoon of July 4th?

A. Yes.

Q. All right, and from there where did you go?

A. I drove down to U.C.L.A.

Q. Where did you put your car?

A. In the parking lot there.

Q. And what did you next do?

A. I called 1100 Somera Road. I telephoned.

Q. You telephoned that number, and did anyone answer the phone?

A. No.

Q. Did you make any other telephone calls?

A. Yes.

Q. To whom did you make your next phone call?

A. Yellow Cab Company.

Q. Did anyone—without saying what was said, did anyone answer at the other end?

A. Yes.

Q. Did you make any request of them?

A. Yes.

Q. And did you give them your name?

A. Yes.

Q. And then subsequent to that call, what happened?

A. The cab driver came and picked me up.

[fol. 1163] Q. The cab driver came and picked you up. You saw a Mr. Socha that testified here in the trial?

A. Yes.

Q. Was that the cab driver that picked you up?

A. I presume it was.

Q. Well, did he resemble the cab driver that picked you up?

A. Yes, in general.

Q. All right. Then where did you direct the cab driver to take you?

A. To 1100 Somera Road.

Q. And did you then give him that address?

A. Yes.

Q. 1100 Somera Road?

A. Yes.

Q. Did you proceed there?

A. Yes.

Q. And when you arrived on Somera Road—1100 Somera Road, what happened?

A. I got out, asked him to wait a moment, walked out on the lawn. The car was gone from the garage. I assumed that Norma was gone, and from walking out on the lawn you

can see into the kitchen and living room, assumed that no one was home.

Q. Did you observe that no one was home?

A. I did not see anyone there.

[fol. 1164] Q. Just tell us what you did or didn't see.

A. I didn't see anyone there. I then walked back to the cab driver and paid him, and then walked back out on the lawn.

Q. Did the cab then drive away as soon as you had paid him, as soon as you paid the driver?

A. I believe he made some notation on his——

Q. (Interrupting) Trip sheet?

A. Trip sheet.

Q. Then he drove off?

A. Yes.

Q. And then where did you go from there?

A. I stayed in that same area.

Q. In the back yard of the McCauley home?

A. The lawn part of the grounds.

Q. How long did you stay there?

A. Until about 9:30.

Q. At 9:30 what did you do?

A. I went across the street to a—the house under construction.

Q. You were present in court yesterday when Mr. Baird indicated a house under construction and its relative position to the McCauley home?

A. Yes.

Q. Was it that house?

A. I think so, yes. There is only one being built.

[fol. 1165] Q. There was a house being built. Where was it in respect to the McCauley home?

A. Well, there is a house right across the street. There is a house directly across the street. There is a vacant lot on this side of the home (indicating), and directly across the street from that vacant lot is where the new construction is.

Q. When you got to this house that was being built, what did you do?

A. I went in it.

Q. How much of this house was built at this time?

A. As nearly as I can describe it, the frame was all up. The roof was on. I presume—excuse me.

Q. Were the floors in it?

A. The rough flooring, yes, and—well, outside they had this wiring around it that they use in stucco.

Q. Wiring and black paper that you see houses that haven't been stuccoed yet, but are going to be stuccoed?

A. Yes, this was all part of it.

Q. But as respects that house as to front, back, or side, where did you go in this house under construction?

A. There is an entrance—it is difficult for me to describe the house to you. There is an entrance facing the street, and I went in that entrance.

Q. When you got inside the house, what part of the house did you go to?

[fol. 1166]. A. In that area of the house right there by the door.

Q. And from your place inside the house, what could you see of the McCauley house and of Somera Road?

A. Well, you can see—you can see a diagonal view which cuts maybe right across there. (Indicating.)

Q. You have indicated that the house was on the other side of the diagram.

A. Pardon? That's right. The house—well, it would be this diagonal (indicating).

Q. Just to orient you, you are aware that Somera Road is up there at the top?

A. This is the vacant lot adjacent to the house. The new construction is across the street, and on a parallel with this vacant lot (indicating), and by looking out from that new construction you see a diagonal—this is going down hill, is it not, in that direction (indicating)?

Q. That is Somera Road, wherever it goes.

A. You see a diagonal in this direction (indicating), and, of course, in that direction (indicating) you can see up the road—well, about the same distance.

Q. All right, when you were over in this vacant house or the house being built—in the first place, how long did you stay in this vacant house?

A. Well, I was out of it twice. You mean how long——

Q. How long was it before you finally left?

A. Well, I finally left it, I would say, about a quarter [fol. 1167] of one.

Q. About a quarter of 1:00 a.m. on the morning of the 5th?

A. Yes.

Q. Now going back, while you were in this house under construction, what did you observe with respect to the McCauley house?

To expand the question, did you see anybody in this observation enter or leave the McCauley house while you were there?

A. Yes. I was going to say again that the maid's light went out about 11:30, I would approximate it.

Q. Before that time had you seen anybody come to the McCauley house?

A. No.

Q. After that time did you see anyone come there?

A. Yes.

Q. What time did you see anyone enter or leave the McCauley house after 11:30?

A. Two cars came there about 12:30.

[fol. 1168] Q. What did these cars do?

A. Most of this is by sound, my discerning it by sound. I did not want to be seen. One of the cars went into the garage.

Q. Before the car went into the garage, were you able to see what kind of a car it was as it came up, or at any time?

A. No.

Q. Anyway, a car went into the garage. Then what were you able to observe?

A. The other car drove—kept right on going, and turned around and came back down, and I heard the garage door, and I heard voices, and I thought I heard Norma, and I thought I saw Norma—I say I thought I saw Norma—I thought I saw her dress, her red dress, and someone was with her.

I heard the front door close, and I heard the car door close.

Q. All right, what did you next observe?

A. The sound of that car driving away.

Q. Then what did you next do?

A. Stepped out of the house and walked down—heading down the hill, and as I came within a view of the kitchen, I think that I heard the phone. I am not sure of that, but

at least I saw Norma at the phone in the kitchen at the bar.
[fol. 1169] Q. Then what did you do from there?
A. I walked back to the house, into the new construction.
Q. Why did you do that?
A. I didn't want her to see me.
Q. Was the area dark or light outside?
A. There was a street light right out in front of the house.
Q. How much longer did you wait in this house before you left again?
A. About five or ten minutes.
Q. Then where did you go?
A. May I say first, with respect to time, I left that new construction—at the time I left it and didn't go back there, it was about a quarter of 1:00. Now, this little episode about the telephone occurred before that.
Q. Then, about a quarter of 1:00 you left the house that was being built, finally?
A. Yes.
Q. And you went where from there?
A. Down the hill, down Somera Road.
Q. And where did you walk?
A. Down Somera Road to U. C. L. A. Do you want the route?
Q. Well, you walked from the area of the McCauley home down to U. C. L. A.?
[fol. 1170] A. Yes.
Q. Now, during this period of time—from the time the cab driver left you in the vicinity of the McCauley home until the time that you told us you walked down that hill in the late evening hours of July 4th and the early morning hours of July 5th, did you, at any time, go inside the McCauley home?
A. No, I did not.
Q. Did you at any time go inside of Norma's bedroom?
A. No, I did not.
Q. Did you kill Norma McCauley?
A. No, I did not.
Q. Did you stab Norma McCauley?
A. No, I did not.
Q. Did you tie a stole or scarf around Norma's neck?
A. No, I did not.

Q. Did you have any conversation with Norma McCauley on the early morning hours of the 5th of July and the late evening hours of the 4th of July?

A. No, I did not.

Q. Can you tell us why you stayed in this construction across the street from the McCauley residence in these late evening hours and early morning hours of July the 4th and 5th?

[fol. 1171] A. Why I stayed there?

Q. Yes.

A. Because I didn't want to stay away—because I wanted to find out who was threatening Norma, and I didn't know what I could do, but I felt if I watched who came there, that I would be able to help her, that I would be able to find out.

Q. When you went down the road—you walked up—tell us the route you went.

A. Back to U. C. L. A.?

Q. Yes.

A. I went down Somera Road, down Chalon. Chalon turns on Sarbonne, and down Bellagio, then branching off to the left of Bellagio and following it around as it curves down going east; to Stone Canyon Road. I think that is the entrance there, out Stone Canyon Road onto Sunset, over that little distance on Sunset to the street which runs down past the parking lot and the Law Building on the U. C. L. A. campus.

Q. When you got there, what did you do?

A. Got in my car.

Q. And where did you go?

A. Drove home.

Q. And what time was it when you arrived home?

A. About 2:30 or 3:00 o'clock, about the time I went to bed, and I went to bed almost directly after arriving home.

[fol. 1172] Q. What time did you awaken in the morning?

A. About 9:00 or 9:30.

Q. And when you woke up, did you get out of bed?

A. Yes.

Q. Did you dress?

A. No.

Q. What garments, if any, did you have on when you arose?

A. My pajamas.

Q. Did you have a robe?

A. I put the robe on when I got up, yes.

Q. And then what did you do? After you got up, what did you do?

A. I made coffee.

Q. And then what did you do next after you made your coffee?

A. During that time I made a phone call, and I also worked on my monthly bills, wrote checks.

Q. At any time while you were up there at Mrs. McCauley's home in the late evening hours of the 4th in the vicinity of Mrs. McCauley's home, in the late hours of the 4th, the early hours of the 5th, did you take any money from those premises?

A. No.

Q. Did you take $28.00.

[fol. 1173] A. No, sir.

Q. Or any other sum?

A. No.

Q. You say you made a phone call. Without telling us any of the conversation, to whom did you make that telephone call?

A. To my wife.

Q. How long did that discussion last?

A. I would say about five or ten minutes, something like that.

Mr. Alexander: I didn't get the date of this call.

Mr. Armstrong: July 5th?

The Witness: July 5th.

By Mr. Armstrong:

Q. And was it about what hour in the morning that you made the telephone call?

A. I would say about 10:00 o'clock, as near as I can approximate it.

Q. And then you say that you were doing something about the monthly bills. What did you do?

A. I wrote the checks for the bills and addressed the envelopes, and I think I stamped them. I think I sealed them.

Q. What part of your apartment were you doing this in?

A. My desk.

Q. Your desk was located in the living room?

[fol. 1174] A. Yes.

Q. Did you have some interruption in this chore?

A. Yes. I think—I had gotten an address, I think, from the phone book and was seated, I think, in that chair when the officers came.

Q. And the officers came into your room in what fashion?

A. They had——

Q. (Interrupting) How did they get admittance to your room?

A. They used a key.

Q. Did they knock first?

A. No, they didn't.

Q. They used a key and the door opened; I take it?

A. Yes, they opened the door, came through the door.

Q. And the two officers who previously testified here then stepped into your room?

A. Yes.

The Court: We will take the noon recess at this time.

Ladies and gentlemen, do not discuss the case among yourselves nor talk to anyone about it, nor allow anyone to talk to you about it. Do not form nor express any opinions or conclusions about the case until the matter is finally submitted to you. We will take up again at 2:00 o'clock.

(Recess until 2:00 o'clock p.m. of the same day.)

[fol. 1175] Santa Monica, California

Thursday, December 1, 1955

2:00 O'Clock P. M.

The Court: The jury is present. You may continue, Mr. Armstrong.

JOHN RUSSELL CROOKER, JR., the defendant, resumed the stand, having been previously sworn, was examined and testified further, as follows:

Direct examination (Continued).

By Mr. Armstrong:

Q. John, directing your attention to the afternoon, the late afternoon and evening of July 4th when you told us that you were in the area of this tree in the back yard of Norma's home, while you were in that area did you see the car or any cars come up and stop in front of Norma's home?

A. I didn't see the car, but I knew that the car came twice.

Q. I am talking about the afternoon and evening of July 4th. This would be Monday.

A. Oh. Well, no—wait a minute. That is when she brought the children home.

Q. Where were you when she brought the children home?

A. In the back yard. That is, in the lawn area by the tree.

[fol. 1176] Q. Was it light or dark at that time?

A. Dark.

Q. And approximately what time was it that she brought the children home?

A. She brought—I know now—brought one at one time, or came twice, and the second time brought the older boys, because I heard them. Now, the second time was about—I would say about 9:00 o'clock.

Q. You say you know now she brought a child the first time. What do you mean by that?

A. I didn't see the children.

The Court: Excuse me just a moment. This is off the record.

(An off-the-record discussion was had at this point.)

By Mr. Armstrong:

Q. You say you know now about another occasion. What do you mean by that?

A. I did not see the children. That is, I did not see the two older children on the first occasion when someone came to the house. I did see Kevin and I did see a woman that I could not identify.

Q. Kevin is which one in point of age?

A. That is the little one.

Q. That was the baby?

A. Yes.

Q. All right. Now, there has been testimony in this case [fol. 1177] that there was a key to the McCauley home that was left in the vicinity of the garage here (indicating), either on an ice box or on some shelves in the garage.

Did you know prior to July 3rd and 4th of 1955 of the existence of such a key at such a place?

A. When I worked there, you mean?

Q. Yes, when you worked there. I don't mean necessarily then. I mean at any time.

A. When I worked at the McCauley home, and also when I worked there and was living at the Thompsons', for awhile we had an arrangement of leaving a key first on the shelf, which is right over the meat box, the freezer.

Q. This, that is designated on People's Exhibit 9 as "I.B" for ice-box, is that a piece of furniture you were familiar with?

A. Yes, but it isn't in that area of the garage.

Q. Where is it, if you will just point to it; where was it located?

A. Let's see. It would be right about in that corner (indicating).

Q. Right about here (indicating)?

A. Yes.

Q. All right. Is this right? In this corner (indicating)?

A. Yes, although the relationship does not seem to be correct. This is a vacant lot over here (indicating). This dis- [fol. 1178] tance seems a little long to me here, but it is in that corner.

Q. Regardless of the scale, it would be in this corner of the building (indicating)?

A. Right over the shelf, and the key—originally she kept the key on the shelf, then kept the key in the ice box. Then when she changed all the locks on her doors, she took the key out of the ice box, and to my knowledge never kept one there again.

[fol. 1179] Mr. Armstrong: Just for the record, we are marking on People's Exhibit 9, D-2 in the southwest corner

of the building designated "Garage" a rectangle to indicate the presence of the ice box with the shelf over it.

The Witness: That is a freezer.

Mr. Armstrong: A freezer, a food freezer, you mean, as opposed to an ice box?

A. Yes.

Q. Now, you say that when you had worked there, that there had been a key kept on the shelf or in the freezer?

A. Yes.

Q. But that, you said after the locks were changed——

A. Yes.

Q. —that ceased to be. When were the locks changed in the house, if you know?

A. Well, after the McCauleys' separation, they were changed, all of the locks were changed. In fact, I think on two occasions they were changed. Excuse me.

Q. And as far as the locking of the house is concerned, were there any other security measures adopted at that time?

A. Yes. Well, at that time—I don't think right at the time, but later Norma had these little slide locks placed on the doors that didn't have a bolt-like lock.

[fol. 1180] Q. I see. Do you know specifically which doors those were that were secured in that manner?

A. As I recall, the doors on which that type of arrangement was placed were the kitchen door, which would be this door (indicating).

Q. Indicating the door on People's Exhibit 9 that is marked D-9?

A. Yes. This had a bolt lock (indicating).

Q. Which had a bolt lock?

A. The front.

Q. The main door, indicating D-8?

A. And this had a bolt lock (indicating).

Q. Indicating D-5, the bedroom into Norma's bedroom.

A. And as I recall, these three doors here (indicating), did not have a bolt lock, and I think she put them on those three doors, too.

Q. The three doors just referred to being D-1, and then the two unmarked doors in a westerly direction on the same plane from D-1 on People Exhibit 9, covering the other

door to the nursery, and the door, D-1, that goes into the maid's room?

A. That is my best recollection where she put those.

Q. All right. At the time that the police came into your home, you told us previously that the two officers that have been identified here as the Hollywood officers, came in and were with you briefly, and then Sgt. Gotch and his partner, [fol. 1181] Officer Stambler, came in later on, is that right?

A. Yes.

Q. And at the time they asked you how you injured your hand, is that right, while you were still in your apartment?

A. Yes.

Q. And at that time, what did you tell them at that time was the method in which you had injured your hand?

A. I told them that I had driven to the beach. They asked me where I had spent the day.

Q. What day?

A. The day of July 4th.

Q. All right.

A. I told them that I had driven to the beach and that a car at the beach, on the highway at the beach had tangled fenders with another car and that I had—in attempting to help them—wait a minute. I told them that I had pushed that car, that it had stopped.

Q. You mean tangled bumpers?

A. Yes, the bumpers had tangled, and in attempting to untangle them I had injured by hand.

Q. And that wasn't true, was it?

A. No, sir.

Q. Why did you tell them that?

A. Because I did not want to tell them about Norma [fol. 1182] McCauley.

Q. And why didn't you want to tell them about Norma McCauley?

A. Because it involved things that I did not want to discuss with anyone until I found out what was happening.

Q. And in this connection, knowing what you knew, that you told us so far, and being questioned by the officers on this particular point, did you, at that time, ask the officers if you could see an attorney or call an attorney?

A. Yes, I did, in fact, asked before that.

Q. I see, and that was—Now, as to this particular conversation that we are talking about when they were asking you how you injured your hand, which officers were asking you that particular question first?

A. As I recall, Officer Gotch—Sgt. Gotch asked me that question first.

Q. And how about Officer Stambler, did he ask you that question?

A. I don't think he did, no.

Q. You mentioned that the children's beds were in roughly that position. On the night of the 3rd of July, when you were at that place, you said you went into closet F?

A. Yes.

[fol. 1183] Q. Did you have to move a bed to get into closet F?

A. No, I didn't.

Q. How far would you say the nearest bed was—the bed that would be in the bottom—at the bottom of the row of three beds indicated in the nursery in People's Exhibit 9? How far was the bottom bed from the closet designated F, approximately?

A. The relationship of those beds, one to another, or to the closet wall, or to the outside wall, is not something which you would observe, nor did I observe it.

In other words, their relationship is so changing that there is no fixed position for those beds.

Q. When you went into this bedroom on the evening of July 3rd, do you remember, for instance, when you opened the door to get in the closet, if the closet door extended in its open position to the place where it touched the bed, or was it still a foot short of that? Can you tell us, using that as a guide?

A. When you open the door, did it touch the bed?

Q. Yes.

A. It touched the bed.

Q. In its open position?

A. Yes.

Q. The bed was at least that close to the closet?

A. Yes. You don't have that much distance for the whole three beds to have something like——

[fol. 1184] Q. (Interrupting) But it is your recollection

that you didn't have to move the bed at all to get the closet door open?

A. That's right.

Q. Now, this glass that was in the closet. You said that this glass you found in the children's room, and you put cigarette butts in it, is that right?

A. Yes.

Q. You used it as an ashtray?

A. Well, that wasn't my only use for it, but I did.

Q. Did you put anything else into it?

A. Yes.

Q. And what was that?

A. Urine.

Q. And why did you use that instead of one of the bathrooms in the house?

A. I felt that it would be too noisy for me to use either one of the bathrooms.

Q. Can you tell us why, after Norma had returned, and you talked to her, that you didn't empty this out?

A. We had just neglected this—in fact, I asked Norma to do that.

Q. Well, at that time, why didn't you go into there yourself?

A. It was just too late in the morning, Mr. Armstrong. We were very nervous about the time of day and wanted to conclude this meeting.

[fol. 1185] Q. Did you know this maid, Laurie Dromtra?

A. No, I did not.

Q. Had you ever met her before you saw her in court?

A. No, I had not.

Q. So in the time that she was in Mrs. McCauley's employ, you had not been introduced or hadn't been in the home in her presence?

A. No, not to my knowledge.

Q. To go back a bit, John, you have told us about what your relationship was with Norma, as your friendship developed in 1953, 1954, and a part of 1955.

Now, was there any change apparent to you that came into this relationship in any part of the year 1955 prior to Norma's death?

A. Yes.

Q. And approximately when was it that your relationship had any kind of a change in it from what it had been, let's say, at the end of the 1954 and the very beginning of 1955?

A. Well, I say the entire month of June, and I think that is about when it started, about the first of June, the first part of June.

Q. All right, and in the first part of June was there some event or some happening that you can use as a line of demarcation between when things were as they had been and when things were changed?

A. Yes, and the way that I fix that date is the Thursday [fol. 1186] following Memorial Day, or the Thursday previous to Memorial Day. It could be one way or the other. On that Thursday we had quarreled.

Q. Do you know what you quarreled about?

A. Yes.

Q. Without going into any conversation, what was the subject of the quarrel?

A. On that day Norma and I had talked——

The Court: (Interrupting) What was the subject?

By Mr. Armstrong:

Q. Just the subject.

A. Yes, sir.

The Court: Just the subject matter.

By Mr. Armstrong:

Q. Without going—you started to say Norma and I had talked.

A. The conversation—I am not going to say the conversation. We had talked early in the evening. We were going to talk later in the evening, and then she did not call back. I called her and finally reached her at 5:00 o'clock in the morning, and that is what the quarrel was about.

Q. You mean the fact that she hadn't been where she was supposed to be when you called?

A. That I was worried about where she was and what had happened, yes.

Q. I see. Well, all right, then. After this quarrel you had, either late in May or early in June, what change occurred [fol. 1187] in your relationship?

A. From that point forward, well, as far as the quarrel is concerned, that was straightened out. As I recall, she had a very busy week-end.

Mr. Alexander: May I have that question read?

(Whereupon the reporter read the preceding question as follows: "Q. After this quarrel that you had either late in May or early in June, what change occurred in your relationship?")

The Court: Read the answer.

(Whereupon the reporter read the answer as follows: "A: From that point forward, well, as far as the quarrel is concerned, that was straightened out. As I recall, she had a very busy week-end.")

Mr. Alexander: I move that everything after——

Mr. Armstrong: I will submit that everything may be stricken out after "that was straightened out."

The Court: It may be stricken out.

By Mr. Armstrong:

Q. All right, then, you told us of a quarrel you said that was straightened out. What next happened in your relationship with Norma McCauley that was different than what your relationship had been prior to this Thursday that you have spoken of?

A. In my conversation and in my meetings with Norma, she evidenced to me a troubled state of mind.

Mr. Alexander: I will ask that that be stricken out as a [fol. 1188] conclusion of the witness.

The Court: It may be stricken out.

By Mr. Armstrong:

Q. You can't tell us something that appeared to you: you must tell us the things you observed, that you saw without putting in what you concluded as a result of what you saw.

Tell us what was next indicated to you.

A. For example, Norma——

Mr. Alexander: That is starting off in a manner that must be a conclusion.

Mr. Armstrong: Pardon me just a moment, I will strike out the pending question and put a different question.

Q. What did you next observe in Norma's behavior that was different than the behavior you had observed prior to the last part of May.

A. That her throat was bothering her.

Q. What else did you notice in her behavior that was different than you had observed before?

A. That she was very nervous.

Q. What did you notice in her demeanor toward you that was different than what you had observed prior to the last part of May?

A. That she became so very busy that we saw very little of each other.

Q. All right, then, were there occasions—were you—of course, you were aware of her telephone number?

[fol. 1189] A. Yes.

Q. What was that telephone number, do you recall?

A. (Long pause.)

Q. Well, it is not essential; you knew it at that time?

A. Yes.

Q. When you dialed that telephone number, was there ever an occasion that the telephone was answered in a sense that the ringing stopped and nobody said anything and the phone was just replaced on the hook?

A. Yes. This was not new, however.

Q. This sort of thing did not just start right then?

A. That's right.

Mr. Alexander: I ask that the latter part of the previous answer be stricken out, "This was not new, however." He answered the question when he said, "Yes."

The Court: Everything after the answer "Yes" may be stricken out.

Mr. Armstrong: All right.

Q. Well, aside from Norma's not seeing you as frequently, and aside from her apparent being busy, the fact that she had some sort of disturbance with her throat, was there any other change or difference in her demeanor toward

you that you observed that was different from what it had been prior to the Thursday you told us about?

A. Yes.

[fol. 1190] Q. What was that?

A. She was evasive.

Q. Tell us what you mean by that, in what manner was she evasive toward you about what?

A. About her nervousness, about her throat trouble in particular: I asked her about it, about what she was going to be—to do socially, for example—(coughing) Excuse me.

Q. In addition to these things that you have told us, was there any other difference during the month of June in 1955 of her demeanor or behavior or treatment of you that you observed than what you told us; was there anything further?

A. Yes.

Q. All right, what else?

A. Once when I was with her in a drive-in during the day she looked—I don't want to say "haggard"—worn. She had a——

Q. Approximately what part of June was that?

A. About the middle of the month.

Q. Can you tell us during the month of June, let's say from the 1st of June until the end of June, how many times did you actually see her, discounting for the purpose of this question any conversation over the phone—I mean, see her face to face?

A. I think three times.

[fol. 1191] Q. And one of these occasions was this time in the drive-in you just told us about?

A. Yes. This is not included in July 3rd, of course.

Q. No, I am referring just to the month of June.

A. That's right.

Q. All right, during the month of June did you have occasions where you and she did carry on a conversation on the telephone?

A. Oh, yes.

Q. And directing your attention to the latter half of June, did you have telephone conversations with her during that period of time?

A. Yes.

Q. Can you remember any particular telephone conversation, that is, by the defendant?

A. Yes, for example, I talked to her either on the day of the 27th—I say the day—it would actually be evening, or the next day.

Q. All right. And prior to that did you have any telephone conversation which you can fix by date?

A. Oh, yes, I had the conversation with her on the morning of the 22nd of June.

Q. All right. And then on the morning of the 22nd of June, in that particular conversation, did she tell you anything that was unusual—without saying what it was.

[fol. 1192] A. Yes, sir.

Q. And in this conversation did she tell you something that indicated a particular feeling or a state of mind of hers?

A. Yes.

Q. All right. In this conversation on the morning of June 22nd, what did she tell you?

Mr. Alexander: That is hearsay, if the Court please—well, I will withdraw the objection. We will permit the answer.

A. She told me that she had had an operation.

By Mr. Armstrong:

Q. Did she tell you in this conversation what the nature of that operation was?

A. Yes.

Q. What did she say?

A. She said she had had an abortion.

Q. And did she say anything about the circumstances of that other than tell you of the fact?

A. Yes, we talked several times that day about it, and before the day was over she told me what had happened the previous night.

Q. What had happened what?

A. The previous night.

Q. She indicated that this had happened the previous night?

A. Yes.

[fol. 1193] Q. And you had this telephone conversation with her on the 22nd of June?

A. Yes.

Q. After you had had this telephone conversation did you

do anything unusual, or did you do anything with respect to the intelligence that you had gained this way?

A. Yes, I sent her flowers on that day, for example.

Q. You told us that on the 3rd day of July, the early morning hours of the 4th of July when you had a conversation with her in her home, that she had told you "they" know about my operation.

A. Yes.

Q. In the context of the conversation was she referring to this operation?

A. Yes.

The Court: May I have the Exhibit I for identification?

By Mr. Armstrong:

Q. You told us that on the first part of June or on the last part of May on this Thursday that you and Norma had had a quarrel. Had you, during the course of your relationship that you previously described to us, quarreled before that?

A. Yes.

Q. I will show you a letter that has been marked I-7 for identification and ask you if you recognize the handwriting on that letter?

A. Yes.

[fol. 1194] Q. In whose handwriting is that?

A. Norma's.

Q. Would you read it to us?

(Witness peruses letter.)

Q. Was this letter, Defendant's Exhibit I-7, a letter that was written to you by Norma McCauley?

A. Yes.

Q. Was it written to you—What were the circumstances of that particular letter having been written to you?

A. She wrote about the quarrel.

Q. About the particular quarrel you just referred to?

A. Yes.

Q. Or some other quarrel?

A. Yes.

Q. This was a letter of hers in reference to this quarrel on a Thursday?

A. Yes.

Mr. Armstrong: I will ask that this letter be received in evidence, if the Court please, as Defendant's Exhibit I-7.

(Court peruses letter.)

The Court: It will be marked Defendant's Exhibit I-7 in evidence.

By Mr. Armstrong:

Q. Now, John, I noticed in some of these letters, directing [fol. 1195] your attention to People's Exhibit I-15 in evidence, that the letter is signed with what appears to be an N.

A. Yes.

Q. As in Norma. Did that stand for Norma's name?

A. Yes.

Q. I notice in another letter, in Defendant's Exhibit I-2 in evidence, the letter is signed M, as in Mary.

A. Yes.

Q. What did the M stand for, if you know?

A. I always used to call her "Ma'am," whenever anyone was around, and it was a joke between us.

A Juror woman: I didn't get that last.

The Court: Read the answer, please.

(Answer read.)

The Court: Your next question.

[fol. 1196] Q. John, directing your attention to the time the police officers had taken you into custody and taken you down to the West Los Angeles Station, after you left the Central Station. You previously testified that Sgt. Hooper had struck you, is that not right?

A. Yes.

Q. Approximately what time of the night or day was it that that particular thing happened?

A. Using the time on the top of the statement about, I would say about 2:30.

Q. Now this statement, which is People's Exhibit Number 18 in evidence, starts out, "Witnessed July 6th, 1955, 3:30 a.m.," did you write that?

A. Yes

Q. And at the time you wrote these words was there a clock in the room in which you were writing?

A. I didn't see a clock.

Q. Were you wearing a watch?

A. No.

Q. Did you consult anybody as to the time?

A. When I (coughing)—excuse me—concluded writing this, Officer Gravante wanted me to put this "Witnessed July 6th" up here and the time, and he told me what time it was.

Q. So this time, 3:30 a.m., was actually put on here at the time it was concluded?

[fol. 1197] A. Everything was done, yes.

Q. Not the time it was begun?

A. That's right.

Q. You didn't put the time on it anyplace else?

A. No.

Q. All right. Now, previously you told us that you did write People's Exhibit 18, isn't that right?

A. Yes.

Q. Right at the time that you wrote this document, you knew what you were writing, did you not?

A. Yes.

Q. You appreciated the words that you were putting down; I mean, you were conscious of what you were saying, isn't that right?

A. Yes.

Q. Why did you write this?

A. Because I didn't want to go on with this that I had been going on for all these hours. I wanted to get away from these officers because I wanted to talk with an attorney before I told what I knew about Norma McCauley, the details of our relationship.

Q. Now up to the time that you wrote this People's Exhibit Number 18 in evidence had you disclosed to any other officers that were questioning you the extent of the relationship between yourself and Norma McCauley that you have told us about here in court?

[fol. 1198] A. No.

Q. At the time you wrote People's Exhibit Number 18, were there any preparations being made by any of the officers that you could observe to leave? Was there any indication by anybody to you in either act or word that they were going to finish with the questioning of you?

A. They told me that if I wrote this that they would leave me alone, yes.

Q. What did they say about the alternative, if you did not write it?

Mr. Alexander: Do we know who is doing the talking, if the Court please?

The Court: Objection sustained.

By Mr. Armstrong:

Q. All right, we are talking about "they", so let's identify the conversation. When you say "they", to whom are you referring right now?

A. After Officer Hooper had hit me in the stomach and asked me if I heard him and I said yes, I heard him; he said, "Well, answer me." And after he had told me that if I didn't answer his questions and tell him what he wanted to hear, that he would work on me like that for the rest of the night; and Officer Gravante said that he meant it. And I asked him what should I do, what can I do to make them leave me alone? And he said, "Tell us about this; you know what happened; now, tell us about it."

Q. And it was at approximately that point that you began [fol. 1199] writing this, is that right?

A. Yes.

Q. Well, now, had the officers, in the questions that they had asked you on the 5th of July and the early morning of the 6th of July, furnished you information regarding any circumstances of Norma's death?

A. Oh, yes.

Q. Can you tell us, in the questioning that had been done, and if you will tell us by whom, as close as you can remember what information had been furnished you prior to writing this exhibit?

A. Sgt. Gotch told me that Norma was dead and that she had been stabbed and strangled and even told me that Kirk found her on the chaise lounge.

Q. Did any officer mention the fact that a toy had been found beside her?

A. Yes, a little toy car on the chaise lounge.

Q. All right, and that information was furnished you by whom?

A. Sgt. Gotch.

Q. By Sgt. Gotch, and the other officers, that questioned you—did any other officer furnish you with any information that was included in the document?

A. Well, Sgt. Gotch told me—asked me many questions about money at the Central Station, and also questions about keys at the Central Station.

[fol. 1200] Q. He had asked you about keys. In what type of questioning at the Central Station did he ask you about keys?

A. He asked me if I had a key to Norma's home, and he asked me if I had a key to her car.

Q. Did he say any more about keys, do you know?

A. Well, he had asked me—Sgt. Gotch again had asked me about keys in my apartment when he asked if I had a car, and I gave him my car keys, and he asked me what all these keys were on there to.

Q. And did he say anything more about—at that time—about why he was inquiring about those keys?

A. No.

Q. But in his later questions he did ask you if you had a key to Norma's house and a key to Norma's car?

A. Yes.

Q. In any of the questioning, did he accuse you of having keys to the house and car?

A. No. As I recall, he did not put it that way.

Q. He just put it to you in his questions?

A. Yes.

Q. It was Officer Gravante, I believe it was, who was sitting next—nearest you at the time you actually wrote this, is that right?

A. Officer Gravante, yes.

Q. Now directing your attention to Page 5 of this five [fol. 1201] page document, did Officer Gravante have anything to do with the subject matter, just of Page 5?

A. Yes.

Q. And in what manner and in what way did he have anything to do with that subject matter?

A. Well, I had written this much (indicating).

Q. Will you read the part you had written? This is an exhibit in evidence.

A. I mean, I had written these pages (indicating).

Q. Now, we get to Page 5——

A. (Interrupting) And he read each page as I read it—I mean, as I had written it, and then asked me, "what about the knife?"

Q. All right. Did he say anything else?

A. I don't think he said, "What about the money?" I think he said, "What about the keys?"

Q. Will you tell us, as close as you can remember, what happened? You say he had been reading the pages as you wrote them?

A. Yes.

Q. You finished writing Page 4. Then what did you do when you got down to the last word on Page 4 that you wrote? What did you do? Did you hand it to him?

A. I was handing him each page.

Q. When you handed him Page 4, what happened right at that time?

[fol. 1202] A. He read it.

Q. After he read it, did he ask you to go ahead and say something on that subject on the ensuing page?

A. He didn't ask me. When he said that, then I started writing this page, and I wrote this paragraph right here (indicating).

Q. Did you write everything on this page, too, of the questions that Sgt. Gravante asked you, or did you write this first paragraph as a result of that question?

A. Just the first paragraph, and then I added that right there (indicating).

Q. Was there any comment by the officer that prompted you to add this last paragraph?

A. No.

Q. Had there been any questioning from any other officer about money up until the time that this document was written?

A. Oh, yes.

Q. Who had asked you about money?

A. There were questions at the Central Station about money. Sgt. Gotch asked me about money. Officer Stambler telling me about money, and at the West Los Angeles Jail. Lt. Armstrong asked me questions about money and——

Q. (Interrupting) Just stop there for a minute. You say asked you questions about money. For instance, can you

give us the questions, the substance of the questions as you [fol. 1203] remember?

A. Well, they asked me substantially the same questions that Sgt. Gotch had been asking.

"How much did you get paid at the McCauley's?"

"Did she ever give you any money since you stopped working for her?"

"When was the last time she gave you money?"

Questions like that.

Q. Did anybody ask you if you had taken any money from her home or person on the morning of July 5th?

A. They did not put the question like that.

Q. They didn't put the question in that fashion?

A. That's right. Oh—may I say that when Sgt. Gotch was talking to me at the Central Station, he told me that I had taken money.

Q. He told you that you had taken money when?

A. In the Central Station.

Q. But I mean—in his telling you that—when did he indicate to you that he believed that you had taken money? What did he say?

A. That is when he said, "We have been listening to you long enough now. I am going to tell you something. Norma McCauley is dead, and I think you killed her. I think you went up there and stabbed her and strangled her to death, and took her money and left."

Q. That questioning indicated that you had taken money [fol. 1204] on that date, on the 5th of July?

A. Yes.

Q. Directing your attention to Plaintiff's exhibit 9 in evidence, are you able to see the driveway and garage from this room that has been marked "nursery" on People's Exhibit 9 (indicating)?

A. Well, if you look out these windows (indicating), you can see—I think—a part of this side (indicating), and you can see this area of the driveway (indicating).

Q. Can you see Somera Road?

A. Of course you do not have a clear view of Somera Road. Right along the fence there is a great deal of foliage, but you do know there is a road there, and you do see a part of a road.

Q. Where do you see any part of Somera Road from this nursery window (indicating)? When you indicated "from this window you see", you were indicating the windows indicated on the north side of the room designated "nursery" in People's Exhibit 9, is that right?

A. Yes. Well, you see this portion of the road right here (indicating), just beyond that fence. The fence goes up parallel with the maid's room and comes out this way (indicating).

[fol. 1205] Q. How high is this fence, approximately?

A. It is five or six feet off the ground. Now, it starts—that is, the top of the fence is about five or six feet off the ground. It is a slatted fence. I mean, it isn't a close-boarded fence. There are spaces between the boards about two and a half or three inches.

Q. Can you see things between those spaces?

A. You have a partial view of them, yes.

Q. What about this foliage you spoke of?

A. That foliage is along — in the same direction as the street.

Q. It is that portion of the fence that is covered with foliage?

A. Yes.

Q. That is some sort of a tropical foliage, is it?

A. Yes. I don't know enough about that to tell you what kind, but it is high.

Q. Directing your attention to People's Exhibit 10 in evidence, there appears here what looks like an ambulance or panel truck over on the left-hand side (showing same to witness).

A. (Examining same) Yes.

Q. And just above the top of that truck is what appears to be some sort of growth. Is that the fence you have been describing?

A. Yes, there is growth there, and this tree (indicating), as I recall, this tree is set a little bit nearer the garage. [fol. 1206] There might be a little opening there. I don't think it is appreciable.

Q. Now, in this photograph that is People's 10, can you see in the photograph any window that goes into the room marked "Nursery" in People's 10?

A. Yes.

Q. Would you designate which one you can see?

A. Well, this window (indicating), and I can't see the doors, and so I can't get a clear view to say whether this window is also a nursery window (indicating). This one back here is a nursery window (indicating).

Mr. Armstrong: For the record, the witness is indicating the windows to the far left of the—one window to the far left of the front portion of the house as it appears in the picture in People's Exhibit 10, and possibly the window—or the questionable answer as to "Maybe it is and maybe it isn't," was the window in the immediate right of what appears to be a tree in front of the house on People's 10.

All right. What sort of drapes or blinds, if any, are on the windows in the nursery?

A. They are heavy cloth. I believe they are lined curtains. They shut out the light.

Q. And when you were in the nursery on the night of the 3rd of July, do you recall whether these curtains were in an open or closed position?

[fol. 1207] A. As I recall, they are partial, and I mean by that, the curtains don't do a perfect job of closing out all the light, and there is quite a lot of light from the street light out in the street, so they fixed the curtains so that they won't shine into the children's eyes while they are sleeping, if they can.

Q. Anyway, were these curtains arranged in such a manner on the night of July 3rd that it was impossible for you to see something in the street from the room in the nursery?

A. You mean without moving the curtains?

Q. Without moving the curtains.

A. You would have to move the curtains.

Q. Are those curtains — are they on a drawstring or valance box?

A. As I recall, they move on a little — they are little individual curtains. For each window there is a pair, and they move on a little rod, as I recall.

Q. When you were in Norma's house on the 3rd of July of 1955, did you see a kitchen knife or any other kind of a knife in Norma's bedroom?

A. No.

Q. When you were in Norma's house on the 3rd of July, had you seen a toy revolver any place in Norma's bedroom?

A. Yes.

[fol. 1208] Q. Where had you seen a toy revolver?

A. On this little dresser (indicating).

Q. Indicating the dresser that is marked "Dresser, 3.8 feet high" in the entryway to the bedroom in People's Exhibit 9.

All right. Now, you told us earlier, John, that after you had left Norma McCauley's employ—that is, her home, actually living in the home, that you went to the Thompson home and were still employed by Norma for a short time?

A. Yes.

Q. And for a time after that you were employed by the Thompsons themselves?

A. Yes.

Q. That employment terminated, you told us, when?

A. About the middle of June, the same time that we had examinations at U.C.L.A.

Q. About the middle of June of 1955?

A. Yes.

Q. All right, and was there a particular thing that had happened just prior to that employment terminating?

A. Yes.

Q. And what were the events that happened just before that?

A. I believe it was a Sunday. At any rate, the Thompsons entertained and I worked at the party——

[fol. 1209] Q. (Interrupting) In what manner did you work at the party?

A. Bartending——

Q. What did you do?

A. Wait a minute. This party was a rather informal party around the pool, and I just assisted taking things out and things of that nature.

Q. I see. All right.

A. It wasn't an informal party. It was a big party in the home, and I believe I bartended that night.

Q. Just to be sure you are talking about the right one, this was just prior to your leaving the Thompson employ.

and so I assume it would be the last party you attended there?

A. That would be correct.

Q. Go ahead.

A. At any rate, I finished the evening by washing dishes, and it was quite late, and I had told Norma that I would like to see her after the party concluded. We had arranged——

Mr. Alexander: (Interrupting) I will ask that this be stricken.

By Mr. Armstrong:

Q. Just tell us what you did.

A. Excuse me, so after I had finished with my duties, I got my books from the house and was planning to leave the house and go down to my quarters and get ready to [fol. 1210] leave the house, and I believe I told Mr. Thompson that I was leaving the house to go and eat, and I believe I had hurt my finger or something like that. At any rate—or Mrs. Thompson had hurt her finger—at any rate, she was helping me or I was helping her dress that wound, whatever it was, on one of us, and Mr. Thompson entered the part of the house where we were and accused me of planning to meet his daughter.

Mr. Alexander: If the Court please, at this time I think it becomes evident that this is wholly incompetent, irrelevant and immaterial.

The Court: Objection sustained.

Mr. Alexander: And I ask that the entire answer be stricken.

The Court: The answer is stricken. I instruct the jury to disregard it.

By Mr. Armstrong:

Q. Did you voluntarily leave or resign or withdraw from your position in the Thompson home, or were you fired?

A. I was fired.

Q. Then, it was after that occasion that you rented your apartment on Marathon, is that right?

A. Not directly after, but it was after that, yes.

The Court: We will take the afternoon recess at this time, ladies and gentlemen. Do not discuss the case among yourselves nor talk to anyone about it, nor allow anyone [fol. 1211] to talk to you about it. Do not form nor express any opinions or conclusions about the case until the matter is finally submitted to you.

We will take a ten-minute recess.

(Short recess.)

The Court: The jury is now present. You may continue, Mr. Armstrong.

By Mr. Armstrong:

Q. John, in People's Exhibit 18 in evidence you wrote that in the evening hours of the 4th of July you waited or you hid in a closet in the children's room and waited until they were asleep. Did you, in fact, hide in a closet in the children's room and wait until they were asleep on the evening hours of the 4th of July?

A. No, I did not.

Q. Then you said later, after she had come home in the early morning hours of the 5th of July that you went in her room. Were you in her room in the early morning hours of the 5th of July?

A. No, I was not.

Q. Then you said you talked to her and that she started to go to sleep. Did this happen?

A. No, it didn't.

Q. Then, you said, referring to the early morning hours of July 5th, that you found a kitchen knife about ten inches long with a blade about six inches on a dresser by the [fol. 1212] door in the bedroom. Did you find such a knife?

A. No, I did not.

Q. Then you said that in the early morning hours of July 5th that you took Norma's throat in your hands and she started to scream. Did either of those things happen?

A. No, it did not.

Q. You said that you heard the maid so you reached for the knife while holding your hand over her mouth. Did that happen?

A. No, it did not.

Q. Then you said you choked her with some clothing around her throat, and you took the knife and pushed and pushed on it. Did you do that?

A. No, I did not.

Q. Then you said that you took the knife, her car keys and some money and thought you must go. Did you take any of those things in the early morning hours of July 5th?

A. No, I did not.

Q. All right. Then, after you wrote this People's Exhibit No. 18, you told us earlier that the officers took you to Norma's home at 1100 Somera Road. All right. Now, directing your attention to the time you were taken into the home, after some preliminary difficulties outside of the house on getting in, you got into Norma's bedroom, is that right?

[fol. 1213] A. Yes.

Q. At the time you were in Norma's bedroom in the early morning hours of the 6th of July, who were the officers that were persent at that time?

A. Sgt. Hooper, Sgt. Gravante, I believe Lt. Armstrong was there, Sgt. Gotch, I think was there. There was a photographer there in the bedroom.

Q. Was this photographer identified to you as a police officer or a newspaperman?

A. No, he was not identified to me.

Q. Anyway, he was not wearing any kind of uniform, I take it?

A. No.

Q. Were any of the officers wearing any kind of uniform?

A. No.

Q. Were any other persons present besides those you have mentioned?

A. Those are the only ones that occur to me.

Q. How about Inspector Kerr, was he there?

A. I was not aware of him.

Q. How about Officer Stambler, was he there?

A. I was not aware of him.

Q. Directing your attention to that time again with those persons present and at that location, will you relate to us the substance of the conversation that thereupon took place, [fol. 1214] as closely as you can recall; tell us who said what.

A. Sgt. Hooper led the procession into the bedroom. He walked directly over to the chaise lounge and asked me if that was where I had left Norma.

Q. At that time, to clarify one point, Norma's body was not in the room at that time, was it?

A. No.

Q. Go ahead, I am sorry.

A. I said, yes, I thought so. He said, "Was she on the chaise lounge?" And I said I thought so. He pointed to a pocketbook on the dresser and a black purse, as I recall, a little, small black purse was there, and asked me where I had left it. And I said I didn't remember. And he said, "Did you leave it here?" And I said, "I think so."

Q. When he said, "Did you leave it here," what was he indicating?

A. On the dresser. He said, "Is this the purse," and he picked up this black, little black purse. And I told him that I thought Norma's purse was green, a kind of bluish-green. He asked me——

Q. Pardon me just a moment. This purse that he picked up and asked you if this was the purse—what material was this purse? Was it leather or cloth, or was it plastic, or what?

[fol. 1215] A. I can't exactly recall.

Q. What was its appearance?

A. I think it was a leather purse.

Q. Was it leather—did it have a grainy look or a shiny look?

A. I don't know.

Q. What was the size of the purse?

A. It was about wallet-sized. (Indicating.)

Q. Would you hold your hands a little higher?

A. It was about wallet size; I would say about six inches in length and about three or four inches in width, something like that.

Q. And this other purse that was on the dresser, what did it look like?

[fol. 1216] A. That was a plastic pocketbook.

Q. And I will show you here People's Exhibit Number 17 in evidence, and ask you if you see the purse to which they referred there?

A. Well, it was a purse like this—now, I am not sure that that is the purse.

Q. Anyway, it was one that looked like——

A. Yes, plastic top purse, at any rate.

Q. Do you recall the purse that they showed you, what type of material this portion is that appears white in the photograph in People's Exhibit Number 17?

A. My impression of it was that it was either clear or ribbed plastic, but I am not clear on it.

Q. Does this appear to be the similar type of thing to the purse that was showed you, as far as the body of it goes, as you recall what they showed you?

A. Well, just generally that could be the purse, but I am not—I am not at all sure of it.

Q. All right. In any event, you said that they questioned you about the purse and you replied that you didn't know, and then they asked you if you left it on the dresser and you indicated that you thought so. Go on from there—incidentally, again, was that Sgt. Hooper asking you those questions?

A. Yes.

Q. If the questioner is someone other than Sgt. Hooper, [fol. 1217] please indicate.

A. Yes.

Q. Go ahead.

A. He asked me if Norma was lying on the chaise lounge, and I said I thought so.

He asked me if we struggled, and I told him I didn't think so.

Then he asked me how these blood stains got on those little chairs, the children's television chairs, and I said, I didn't know.

He asked me how the blood stains got up on the curtains and I said I didn't know.

Another officer, and I think it was Officer Gravante, asked me where I found the knife, and took me out to the dresser in the bedroom and asked me if that was where I found it, and I told him, yes, but that the dresser looked different than when I had seen it.

He asked me what I meant and I said that when I had

seen it, it had many things on it—purses, books, a toy, things like that.

Q. This was all in reply to Sgt. Gravante's questions?

A. I believe he was the officer who asked those questions. I am not positive, but I believe that it was also Officer Gravante who asked me if I went out the maid's—rather, the bedroom exit which exits out on the lawn from the bedroom, and I told him I didn't think so.

[fol. 1218] Q. All right. What next was said, if you recall?

A. I think it was Sgt. Hooper—and it also could have been Officer Gravante—who said, "You heard the maid?" and I said, "I thought so."

They sat me down on the bed and took pictures of me, and I think they took pictures of me standing by the dresser. Then I believe it was Lt. Armstrong who asked me where the knife was. I think that Officer Gravante also asked me where the knife was. At any rate, at that point they took me out to the kitchen. I told them that I did not know, and told them that we could look for it, and they took me out to the kitchen and I helped them look for a knife. I was looking for a set of steak knives, and I couldn't find it, and I kept telling them that I was looking for that set of steak knives, and what kind of a box it was in, et cetera.

Then they asked me over and over again there in the kitchen where the knife was, and that I surely did know where it was, and I told them that I didn't know, and implored them to believe me, and that we could look for it.

Mr. Alexander: May I have that latter part read, please?

(Reporter reads the record.)

By Mr. Armstrong:

Q. Now at the time that you were telling them you didn't know, what did the officers say to you? Which officers said anything to you at that time?

[fol. 1219] A. Officer Gravante told me that I must know where the knife was.

Q. Did anybody else say anything about it?

A. I believe Lt. Armstrong also told me that I must know where it was.

You see, going down the hill, after we left the house, they took me down there and they were doing all of the talking

about the knife, and I know that Officer Gravante was questioning me about the knife in the kitchen, and I believe that Lt. Armstrong started at that point, too.

Q. Did they say anything about making—about their being willing or unwilling to make a further search for the knife at that time?

A. In the house, you mean?

Q. Well, in this sequence of events, yes.

A. On the way down the hill, they did, but not in the house.

Q. On the way down the hill, what did they say about the knife, about making a further search for it?

A. Lt. Armstrong said that I was crazy if I thought that he was going to walk from there to my apartment.

Q. And when he said that, what did you say to him?

A. I didn't say anything to him. I kept telling Officer Gravante over and over, "I don't know where it is. Make him leave me alone," and I carried on that kind of a conversation with Officer Gravante all the way down the hill, [fol. 1220] and when we got up to the West Los Angeles Jail, I guess I had convinced him that I didn't know where it was, and they let me go to bed.

Q. We got a little ahead, being outside the house—was there anything else in the conversation material to these things that we have been discussing that were said by the officers and replied by you, or volunteered by you in the house?

A. I told Officer Gravante that they were going to start in all over again about the knife, like they had been all of the times since they had arrested me, and that I didn't know where the knife was. I just couldn't tell them anything about a knife, and would they leave me alone, and I believe that I told Officer Gravante that I was afraid of what they were going to do.

Q. When you told him that, did he say anything in reply to it?

A. He said, "Why should you be afraid of us?"

Q. What did you say?

A. I said, "You know why."

Q. Was there anything further than that conversation?

A. I asked him if he would give me a drink, and he said, "Yes," and he said, "Would you like a drink of milk?"

And he gave me a drink of milk.

Q. From where was this obtained?

A. In the kitchen, from the ice box.

[fol. 1221] Q. From the McCauley home?

A. Yes.

Q. Was there anything else in the conversation there now that we have either skipped over or omitted that you can recall now?

A. Well, yes. They asked me—had I gone out the bedroom door? And I said I didn't think so. Then they walked down the hall and they said, "Did you go out this door" (indicating), pointing to the front door.

Q. The front door of the house?

A. Yes, and I said I didn't think so. Then they said, "Did you go out this door?", pointing to the kitchen exit adjacent to the garage, and I said that I thought I went out that way.

Q. On this occasion that you and the officers were up there in this house, were all of these things that you have said—that you have indicated here—said in response to questions of theirs?

A. Oh, yes.

Q. Did you at any time that you were up there make a running narrative embodying these things you said, without any questions by anybody else?

A. No. May I say one thing more that happened in the bedroom?

Q. Yes, if it was part of the conversation, identify who said what.

[fol. 1222] A. They asked me——

Q. Who?

A. Sgt. Hooper asked me if I had washed up in the bathroom, and I said I didn't think so.

Q. Now, at that time did you tell them anything, if you recall about—that you took your handkerchief and wiped off the knife?

A. No.

Q. And went into the bathroom?

A. No.

Q. You didn't say that on that occasion?

A. No.

Q. Well, now, to go back when you first came into the bedroom on this occasion with the officers, you said Sgt.

Hooper led off. Now, if you can direct your memory back to that occasion, can you recall if anybody said anything before Sgt. Hooper, or what was the very first thing that was discussed when you came into that scene?

[fol. 1223] A. Officer Hooper walked over to the chaise lounge and said, "Is this where she was?"

Q. Well, now, before Officer Hooper had said that, had any of the officers present said anything to the effect of "Show us what happened", or anything like that?

A. No.

Q. The first thing you can recall about it was Officer Hooper walking over to the chaise lounge and saying, "Is this where Mrs. McCauley was?"

A. Yes. This is in the bedroom.

Q. Yes; prior to that, when you first came into the house, gained entry into the house at 1100 Somera Road, was there any questioning that went on before you got into the bedroom?

A. Yes. We stood around outside there quite some time while they were trying to get in.

Q. While you were standing around outside, was there any question material to these facts——

A. (Interrupting) I think this was Officer Gravante who said, "Is this the door?" And I said I thought so.

Q. Aside from that, was there anything about the actual circumstances of Norma's death that was questioned or answered or volunteered by you or anything else outside there?

A. No.

Q. Well, from the time that you left the police station [fol. 1224] and approached the vicinity of Somera Road—of 1100 Somera Road—until the time that you left Somera Road to go back to West Los Angeles, was there any occasion where you simply went through a statement, without questions preceding each phase of it?

A. No. Well—when we left the jail to go up there, Officer Gravante was seated beside me, rubbing my neck and telling me to relax, why didn't I relax, and kept rubbing my neck.

Q. As far as any statements of yours was concerned at that time, when he was telling you to relax, did you go through a detailed account of the things that had been embodied in Exhibit 18 that you had previously written?

A. No.

Q. Now, at the time that they were questioning you in Mrs. McCauley's bedroom about this purse, did any of the officers present that you recall say anything about fingerprints on the purse?

A. No.

Q. Did you ask any of the officers present if they had checked the purse for fingerprints.

A. No.

Q. Now, when you were talking to them about the purse, did you tell them that you had taken the car keys from the black purse you described and some money in the clear plastic purse?

A. No.

[fol. 1225] Q. You did tell them that you had taken some money, did you not?

A. You mean at the scene?

Q. At the scene, yes.

A. As I recall, we did not have specific questions like that. Now, we could have, but as I recall, we didn't have specific questions pertaining to keys and money, per se.

Mr. Armstrong: I have no further questions at this time on direct examination. I would like permission of the Court to have—to allow the jury to read the last exhibit which the jury has not seen at this point.

The Court: Very well. That is merely one brief document. Is there any objection to your continuing while one juror at a time examines it?

Mr. Alexander: I have no objection.

Mr. Armstrong: No objection. To make sure we have the right one, I believe that was I-7, is that correct?

The Court: That is correct.

(Mr. Armstrong hands exhibit to the jury and jurors examine same.)

The Court: You may cross examine.

[fol. 1226] Cross-examination.

By Mr. Alexander:

Q. Mr. Crooker, in addition to your one year of law at U. C. L. A., you had some more law experience, did you not?

A. Yes. In fact, I actually received the same courses.

Q. You had some law courses at Southwestern, too, did you not?

A. That is what I refer to, yes.

Q. So you had law courses at Southwestern and you had law courses at U. C. L. A., is that right?

A. The same courses, yes.

Q. Now, Mr. Crooker, we have People's Exhibits I-15 and I-3, that being postmarked—they being postmarked respectively October 13th—that would be '54, is that right, October 13, 1954, this letter on blue stationery, the year?

A. I presume.

Q. Well, look at it (showing same to witness).

A. (Examining same) 1954, yes.

Q. And I-3 was also in October of 1954, is that correct?

A. That is a posted letter, is it?

Q. Yes, posted.

A. Yes.

[fol. 1227] Q. We will start with those dates as long as we have those two dates established now.

In October, 1954, you had a tender regard for Norma McCauley, did you not?

A. Yes, sir.

Q. And she apparently reciprocated that tender regard?

A. Yes.

Q. You loved her and she loved you?

A. Yes, sir.

Q. And that relationship continued down to her demise, is that right?

A. Yes, sir.

Q. Of course, that Thursday—either before the 30th of May or the 3rd day following the 30th of May, you had a slight quarrel with Norma. Do you recall that?

A. Yes.

Q. That was no more or less than a lovers' quarrel, was it?

A. No. I wouldn't say so.

Q. You wouldn't say what?

A. That it was anythong more than a lovers' quarrel.

Q. Just a slight misunderstanding that passed over in no time, is that right?

A. It did not pass over in no time, no.

Q. It took some time to pass over?

[fol. 1228] A. Yes.

Q. How much time?

Mr. Armstrong: Pardon me. Mr. Crooker, will you keep your voice up a little louder. It is difficult to hear you.

The Witness: Excuse me. I think about three days, something like that.

Mr. Alexander: And at the end of three days, that quarrel was completely forgotten, is that right, so far as you and Mrs. McCauley were concerned?

Mr. Armstrong: I will object. It calls for a conclusion of the witness, as far as Mrs. McCauley is concerned.

The Court: You may answer.

The Witness: It wasn't forgoten insofar as I was concerned.

By Mr. Alexander:

Q. You mean you harbored a grudge against Mrs. McCauley?

A. I do not mean that.

Q. What do you mean by that?

A. I mean that I referred to it many times during the months. Excuse me—and I also mean that she referred to it many times during the month.

Q. And did you refer to it for the purpose of hurting Norma McCauley?

A. For the purpose of hurting her?

[fol. 1229] Q. Of hurting her, yes.

A. No.

Q. You still had that tender regard for her after that quarrel, did you not?

A. Yes, sir.

Q. You still loved her?

A. Yes, sir.

Q. And to all intents and purposes, and so far as you knew, she continued to love you after that quarrel, did she not?

A. I had anxieties in that regard.

Q. In any event you had had quarrels like that before this occasion, did you not?

A. That is true.

Q. Misunderstandings, quarrels?

A. That is true.

Q. And they all, as we say, blew over, isn't that right?

A. They had.

Q. So that during the month of June you loved Mrs. McCauley; and did you do anything or say anything to Mrs. McCauley that might in any way frighten her?

A. Yes, sir.

Q. What did you do or say that frightened Norma McCauley?

A. I, during the month, told her that I was going to write [fol. 1230] to her mother, and I also told her that I was going to talk with her mother.

Q. Did you tell her what you were going to talk to the mother about?

A. Yes.

Q. What did you tell her?

A. That I was going to tell her mother about our relationship and to ask her mother to intercede in what I thought was troubling Norma.

Q. You were going to tell Norma's mother the relationship you had with Norma in the past, is that right?

A. That is true.

Q. And that included your intimacies with Norma McCauley, did it?

A. It did not.

Q. Well, what were you trying to tell Norma McCauley's mother that you think frightened her?

A. I beg your pardon?

Q. And what were you going to tell Norma's mother that you think frightened Norma?

A. I didn't know what was frightening Norma.

Q. Outside of telling her you were going to ask her mother to intercede for you did you tell her anything else you were going to do or say to her mother?

A. Not that I recall right offhand; that was the gist of [fol. 1231] what I meant to say to her.

Q. What were you expecting Norma McCauley's mother would do?

A. I thought that she would first find out what was troubling Norma.

Q. So far as your relations with her were concerned, is that what you mean?

A. No, that is not what I mean.

Q. What do you mean?

A. I meant she would find out what I found it impossible to find out.

Q. What were you seeking from Norma; what were you trying to find out from her?

A. What was troubling her.

Q. You mean physically?

A. I don't know. I don't have any way to describe it to you because I don't know what it was.

Q. To put it bluntly, Mr. Crooker, would you say during the month of June Norma wanted no more part of you?

A. I beg your pardon?

Mr. Alexander: Read that.

(Question read.)

A. I would not say that.

Q. Before this month of June you had no anxieties of any kind?

[fol. 1232] A. I beg your pardon. Did I have anxieties before?

Q. Yes, before the month of June.

A. Yes, I would say that I was always anxious about our relationship.

Q. In June you became more anxious about your relationship?

A. Yes, I would say that it was very intense in the month of June.

Q. Was there a question of Norma wanting to break off relations with you? Did that question arise at all?

A. With Norma and me?

Q. Yes. She was the only one you were in love with, isn't that right?

A. That is correct.

Q. All right. So between you and Norma——

A. Was there a question between Norma and me about our relationship being broken off, is that your question?

Q. That is the question.

A. I had conversations with her about that, yes,

Q. Did she express a desire to break off those relations?

A. To me?

Q. Yes, to you?

A. No.

Q. Did you suspect she was trying to break them off?

[fol. 1233] A. Yes.

Q. Now, you told us that in the month of June you saw Norma three times; would you be good enough——

A. Approximately.

Q. All right. Would you be good enough to fix, if you can, those days in June that you saw her?

A. I have tried to do that. If I may refer to notes—it is very difficult for me to do that.

Q. You have made notes, you say?

A. I don't have——

Q. Produce those notes, again, please, that you just had.

Mr. Armstrong: I don't believe the witness consulted any that he had.

Mr. Alexander: I saw him take them out out of his pocket and look at them, and I think the jury did, too.

No, those are not the notes, Mr. Crooker.

The Court: Produce the notes on the yellow paper.

Mr. Armstrong: Produce everything you just took out of your pocket.

The Witness: I don't have any yellow paper.

Mr. Armstrong: It is my impression that he consulted the notes to see if there was a thing that he was looking for, and he put it back without looking at it; but let's have everything in your pocket.

Do you have anything else in your pocket?

[fol. 1234] Is there anything else in that pocket?

The Witness: No.

Mr. Armstrong: Is there anything else in the inside of of your coat?

The Witness: No.

Mr. Alexander: Suppose I cross examine this witness, your Honor.

Mr. Armstrong: Well, I am sorry, but I was trying to help you.

Mr. Alexander: Thank you. I appreciate that.

(To witness) Just leave them there, Mr. Crooker, will you, please.

The Court: Just leave them there.

By Mr. Alexander:

Q. You said you had made notes of the time you saw Norma in the month of June?

A. Beg your pardon?

The Court: Read the question.

(Question read.)

A. At the time I saw her, no.

The Court: Read the question.

(Whereupon the reporter read the question as follows:

"Q. You said you had made notes of the times you saw Norma in the month of June?")

A. I did not make the notes at the time I saw her.

The Court: That was not the question asked of you. Just answer that question. Read it, please.

[fol. 1235] (Whereupon the reporter read the question as follows:

"Q. You said you had made notes of the times you saw Norma in the month of June?")

A. I have tried, since this event has occurred, to make such notes, yes.

By Mr. Alexander:

Q. Where are those notes?

A. I don't know.

Mr. Alexander: May these be marked as an exhibit, if the Court please, one exhibit—there are seven sheets of paper and one yellow; may they be marked as one exhibit, if the Court please?

The Court: They will be marked People's Exhibit next in order for identification; that will be People's Exhibit 34 for identification.

Mr. Armstrong: Pardon me, may counsel approach the bench on this point?

The Court: I see no reason for it. The record is clear. The defendant produced notes for reference in connection with his testimony. Those notes may be marked for identification. They are so marked.

Mr. Armstrong: The only point I wanted to make, it appeared to me that the defendant was just rifling through them the way one might in searching through them without reading them, or without reading each note. And I object to the District Attorney being allowed to read—they may be personal notes.

[fol. 1236] The Court: I repeat, the record is clear; in connection with his testimony the defendant produced notes from his person for reference. They are therefore marked for identification.

By Mr. Alexander: Now, then, Mr. Crooker, tell us as well as you can remember when it was in June that you saw Norma the first time in that month?

A. I can't give you the date, Mr. Alexander.

Q. How close can you come to it, just approximate the date, if you will.

A. I believe that it was something like the 5th, and it could have been the 12th.

Q. In addition to the 5th it could have been the 12th, is that what you mean?

A. I mean one or the other.

Q. The 5th or the 12th?

A. Yes.

Q. Go ahead, Mr. Crooker, when next did you see her in June?

Mr. Armstrong: If it would be of any assistance, Mr. Alexander, with your concurrence, I have some notes you asked the defendant about and he said he didn't know where they were——

Mr. Alexander: Mr. Armstrong, you have been of great assistance, but I would rather the witnes answered the question.

[fol. 1237] The Court: There is a question pending, will you answer it, please. Read it, Mr. Bell.

(Whereupon the reporter read the question as follows:

"Q. Go ahead, Mr. Crooker, when next did you see her in June?")

The Witness: May I ask a question, your Honor?

The Court: Answer the question, please.

A. I do not know, Mr. Alexander, without my notes. I would like to see the notes, and they are approximate.

By Mr. Alexander:

Q. All right, if your notes now will help you refresh your recollection, it is all right with me; but at the present time, without the aid of those notes you cannot tell me, is that right?

A. When next I saw her?

Q. Yes.

A. No.

Q. Do you have those notes with you?

A. Right now?

Q. The notes you are referring to that will aid.

A. I wanted to look through those notes to see if I did have them.

Q. Mr. Armstrong here has generously offered some notes: will that help him, Mr. Armstrong?

Mr. Armstrong: Better ask the witness, Mr. Alexander.

Mr. Alexander: I can't take those notes from you, Mr. Armstrong, that's a cinch.

[fol. 1238] (Mr. Armstrong hands witness a yellow sheet of paper.)

The Witness: These are some notes I have made. However, I have made some on white paper that are subsequent to this that I would rather use.

The Court: Are those part of the notes that were in your pocket a moment ago that you produced in connection with your testimony?

A. I don't know, your Honor, I don't know if they are there or not. I didn't get time enough to look through them, your Honor.

By Mr. Alexander:

Q. Then those notes you have before you now will not be of any assistance to you to clear up this question, will they?

A. No, not these, no. They are not as good as the subsequent notes.

Mr. Alexander: May this be marked People's Exhibit next in order, if the Court please?

The Court: It will be marked People's Exhibit No. 35 for identification.

Mr. Alexander: May the record show at the bottom of this yellow sheet I am putting number 35 with a circle around it.

Q. Now, you told this Court and jury that defendant's Exhibit I-12 was a note left to you at your apartment?

A. Yes.

Q. You told this Court and jury that that was left in the [fol. 1239] month of June, 1955, did you not?

A. That is correct.

Q. Now, is there anything on that note that fixes the date for you as being June of 1955?

A. Is there anything on the note? No.

Q. How do you fix that note as having been received in the month of June, 1955?

A. Because I recall that at the time this note was written, it was following a very busy week end of Norma's which took place about that time.

Q. About what time?

A. About the 1st of June. Now, it could have been, as I recall, I think the month of May; and this Thursday following or just preceding Memorial Day, that that week end was right about that period of time.

Q. In other words, People's Exhibit I-12 you received about the time of the quarrel you told us about, is that what you mean?

A. Yes.

Q. Now, does that note help you tell us whether you received the note before or after the quarrel?

A. No, I received the note before the quarrel.

[fol. 1240] Q. And you don't know, then, if the quarrel

was the Thursday preceding May 30 or the Thursday following May 30?

A. That's right. I marked it by the Memorial Day and a Thursday.

Q. This note may have been received in May, is that right?

A. Could have been the last week in May.

Q. Now, when you were shown Exhibit I-1, you first said it was Norma's handwriting, and then you said you were not sure; then you said it was her handwriting.

A. That is correct.

Q. Did you receive notes from a woman or women other than Norma at your apartment?

A. No.

Q. Why were you in doubt as to whether Norma had written I-1 or not?

A. I wanted to be sure that she had written it.

The Court: That was not the question. Will you read the question, please?

(Whereupon the reporter read the question, as follows: "Q. Why were you in doubt as to whether Norma had written I-1 or not?")

A. When I first read this note, I couldn't understand the "tumbling and the judo" and it just didn't occur to me she had ever had occasion to say something like that to me.

Q. You were directed to the handwriting, not the sub-
[fol. 1241] stance of the note, Mr. Crooker, and then you expressed doubt as to the handwriting.

A. My doubt about the handwriting was from the contents of the note.

Q. You have no doubt now?

A. No, I have no doubt.

Q. On the day you received that note, you did have a wife, did you not?

A. Oh, yes.

Q. Would it help you any if I suggested to you that you saw Norma on June 18 of 1955?

A. I saw her at her home when a police officer was brought to the home, and it could have been that date.

Q. That was a Saturday, was it not, Mr. Crooker?

A. That was a Friday, as I recall; it could have been a Saturday, yes.

Mr. Alexander: Does your Honor have a calendar there? I may be mistaken.

The Court: The calendar indicates June 18, 1955 was a Saturday.

By Mr. Alexander:

Q. Now on the 18th of June you still had that tender regard and love for Norma, did you not?

A. Yes.

Q. On the 18th of June you phoned Norma, did you not?

A. Yes, I believe more than once.

Q. You told her you were coming up to the house, did [fol. 1242] you not?

A. We arranged for me to go to the home.

Q. When you came to the house a policeman was waiting for you, was he not?

A. No, he was not.

Q. Did he arrive after you got there?

A. Yes, sir.

Q. After the policeman got there, you left shortly afterward, did you not?

A. After he had made an inquiry, yes.

Q. As a matter of fact, you told the police officer you came up for a notebook, did you not?

A. That is what we told the officer, yes.

Q. Is that the notebook that is here in evidence?

A. That is correct.

Q. And did that policeman ask you what you wanted up there?

A. I don't believe he directed just that question.

Q. Well, in substance and effect?

A. Well, the way that occurred——

Q. Well, suppose you answer the question, Mr. Crooker; did he ask you what you were doing there, or what you wanted there?

A. He made an inquiry of why I was there, yes.

Q. Did you tell him in the presence of Norma that all you wanted was the notebook.

[fol. 1243] A. I told him that I had come up for a notebook, yes.

Q. Then in your presence did this policeman say to Norma, "Do you want to give him the notebook"?

A. I don't recall this exact questioning you are referring to.

Q. In substance?

A. He made inquiry of her whether or not I had come for the notebook, yes.

Q. Then Norma produced this notebook, Defendant's Exhibit H, isn't that right?

A. That is true.

Q. And she gave it to the policeman, and he handed it to you, did he not?

A. She went back into another part of the house to get the notebook. The officer had at some time in this inquiry gone out to the car. He had asked me for my license, and gone out to the car. Now whether or not we went into this when he went out to the car or while he was right there I can't exactly recall.

Q. In any event, you got the notebook and you were on your way, isn't that right?

A. That is not all that occurred.

Q. You left before that policeman left, did you not?

A. Yes, I did.

Q. And you did not get into that house, did you?

A. I did not enter the house.

[fol. 1244] Q. Now at that time did you have some doubts of Norma's love for you?

A. After that?

Q. On the 18th, during this incident, did you doubt her love for you?

A. While I was there at the house, yes.

Q. You were then kind of convinced, were you not, that she wanted no part of you?

A. While I was there at the house, yes.

Q. And then you left?

A. Yes, sir.

Q. How many times did you phone her on the 18th, do you remember?

A. No, sir, we talked on one occasion; how many times I phoned her I really don't know.

Q. Now after you left and returned to your apartment, did you direct a telegram to the home of Norma McCauley?

A. On that day?

Q. On the 18th of June, 1955.

A. It is my best recollection that the direction of the telegram of which you have reference was not the same day. Now, of course, I am not confirming the date on which the police officer came to Norma's home. That can be established, but I am not confirming it.

Q. Whatever date it was, you say you are not confirming it—you are not confirming that it was the 18th of June, is [fol. 1245] that what you mean?

A. That is correct.

Q. It was, however, about 11:00 o'clock in the morning, no matter what day it was, isn't that right?

A. That is true.

Q. And on the same day of that occurrence with the policeman at Norma McCauley's home, did you direct a telegram to her home?

A. As I say, it is my best recollection that it was not the same day.

Q. How soon after that, so far as you can remember did you direct the telegram to her?

A. I cannot recollect, Mr. Alexander.

Q. Would it be a matter of days or weeks?

A. I cannot correlate the two.

Q. Could it have been just about an hour or two after the occurrence with the policeman?

Mr. Armstrong: I object to this question as having been asked and answered twice.

The Court: Overruled. Cross examination.

The Witness: A. If you ask if it could be, it could be, yes; but it is my best recollection that it was not.

By Mr. Alexander:

Q. As a matter of fact, didn't you direct the telegram telling her on the 18th day of June, 1955, at exactly 12:26 p.m.?

A. I did direct a telegram to her during that month, yes. [fol. 1246] Q. In that telegram did you say to her: "Have tried to contact you. Must leave for the day. Will return

late. If unable to contact you by tomorrow, will proceed without further consideration. John Crooker."

A. I sent a telegram, in substance to what you have just read, yes.

Q. And, of course, during that entire month, all your letters and words to her were words and letters of tender love and regards, is that right?

A. All of my letters to her?

Q. And your words to her, too, during the month of June, 1955?

A. No.

Q. What did you mean when you told her, "Will proceed without further consideration"?

A. When I wrote that telegram, what I was referring to was contacting her mother.

Q. And that is what you meant by the telegram and the words, "Will proceed without further consideration"?

A. Yes.

Q. When you said, "Have tried to contact you," what did you mean by that?

A. I tried to reach her on the phone.

Q. A number of times, is that right?

A. Yes.

[fol. 1247] Q. You had tried to see her in person, is that right?

A. On that particular day?

Q. During the month of June, previously, previous to sending this telegram?

A. Yes.

Q. And she would not see you, would she?

A. She had—this particular telegram was concerned with not being able to reach her on the phone.

Q. On the day you sent this telegram, did you see her in person, or did you try to see her in person?

A. It is my best recollection that I did not. It could have been, but it is my best recollection that it wasn't.

Q. However, you are certain it was not the day the policeman was there?

A. I am not certain, but it is my best recollection it was not that day.

Q. Now, during the month of June you knew Fred Chel, did you not?

A. Yes.

Q. Did you ever tell Fred Chel that Norma had broken off with you?

A. No, he told me that.

Q. I asked you whether you told that to Fred Chel.

A. No, I did not, excuse me, no, I did not.

Q. Did you in substance or effect tell Fred Chel that [fol. 1248] you would not let her get away with it?

A. That is not my recollection of that conversation with Fred, no.

Q. Your answer is no?

A. That's right.

Q. And at no time did you tell Fred Chel your relations with Norma were any changed at all in the month of June?

A. Oh, yes.

Q. You told that to Fred Chel?

A. We discussed this change.

The Court: That was not the question.

A. Excuse me, your Honor.

The Court: Read the question.

(Whereupon the reporter read the question, as follows: "Q. And at no time did you tell Fred Chel your relations with Norma were any changed at all in the month of June?")

A. That is not correct.

By Mr. Alexander:

Q. I asked you a question; what isn't correct?

A. It is not correct that I did not tell Fred Chel that there was any change in my relations with Norma during June.

Q. In other words, you did tell him so, is that what you mean?

A. I did.

[fol. 1249] Q. Now, on the 18th of June, 1955—strike that out, please.

When you saw Norma on either the 5th or 12th of June, 1955, you had a financial transaction with her, did you not?

A. I am not referring, when I say those two dates, to the date of our financial transaction, no.

[fol. 1250] Q. Well, on the previous occasion, previous to June 18th, when you did see Norma McCauley, did you have a financial transaction with her?

A. I saw her during the early part of June, when we did have a financial transaction, yes.

Q. And that financial transaction was, you received from Norma $300.00 in cash, did you not?

A. Approximately.

Q. And before you received that $300.00, or approximately, from Norma McCauley, did you have some conversation with her about you going back to Maine?

A. Not during that visit, no.

Q. Previous to that visit?

A. I had mentioned it to her previous to that visit, yes. It was mentioned on several conversations.

Q. Did you tell anyone that you had received this $300.00 from Norma McCauley?

A. I believe I told Fred Chel that I had received some money from Norma, yes.

Q. Did you tell Fred Chel that you had told Norma you were going back to Maine with that money?

A. I may have referred to it in that conversation I had with him at that time.

Q. Then did Fred Chel tell you that if you didn't go back to Maine with the money you should return it?

A. He did not.

[fol. 1251] Q. Did you tell him you had spent part of that money?

A. No. As I recall, I told him about it on the day I received it, if I recollect correctly.

Mr. Alexander: I have here a bank slip, if the Court please, dated June 10th. May that be marked People's next in order?

The Court: People's 36 for identification.

By Mr. Alexander:

Q. I show you a bank slip dated June 10th, 1955, to the credit of the account of J. R. Crooker, Jr., and the first

deposit there is "Currency, $250.00." (Showing same to witness.)

Does that now refresh your recollection as to when you got this $300.00, or approximately, from Norma McCauley?

A. (Examining same.) Surely.

Q. All right, when did you get it?

A. On June 10th.

Q. The same day?

A. Pardon?

Q. The same day?

A. Yes, it was the same day.

Q. And did you deposit the full amount that you got from Norma, or did you withhold $50.00 in cash?

A. I don't know exactly what comprises this $250.00 in cash. I know that the $90.12 was an employment check, and the $250.00 was made up of cash that I had with me at that time.

[fol. 1252] The Court: Just a moment. Would you read the question? Just answer the question, please. That wasn't responsive.

(Whereupon the following question was read: "Q. And did you deposit the full amount that you got from Norma, or did you withhold $50.00 in cash?")

A. I don't know.

By Mr. Alexander:

Q. In other words, you could have withheld that much in cash, is that right?

A. I could have.

Q. Now between the 10th of June, 1955 and the 18th of June of 1955, did anything occur between you and Norma which would cause her to send for a policeman when you told her you were coming to the house?

A. No.

Q. As you sit there now, you know of no reason why Norma would send for that policeman on June 18th?

A. Not that I know of.

The Court: We will adjourn for the day at this time.

Ladies and gentlemen of the jury, do not discuss the case among yourselves nor talk to anyone about it, nor allow anyone to talk to you about it. Do not form nor express any opinions or conclusions about the case until the matter is finally submitted to you.

The Court has another calendar tomorrow morning, so we will not have a session in this case tomorrow morning. [fol. 1253] We will resume at 2:00 o'clock tomorrow afternoon.

(Whereupon at 4:35 o'clock p.m. this date an adjournment was taken until Friday, December 2, 1955, at 2:00 o'clock p.m.)

(Jury leaves room.)

Mr. Armstrong: Before the Court adjourns, may counsel approach the bench for a moment?

The Court: Yes.

(The following proceedings were had at the bench, outside the presence of the jury:)

Mr. Armstrong: Your Honor, I want to preface what I want to say to the Court by saying that I have never had the experience, in the trial of a criminal case, in having a trial where I have had a more dignified and fair attitude from the bench than we have had in this case, but I would like to make this request of the Court, because I feel it is harmful in my observance of the jury, that I would like to request the Court to refrain from expressing impatience to the defendant as a witness.

The Court: Mr. Armstrong, if your defendant would answer the questions directly and responsively, instead of indirectly and evasively, we would not have to caution him and ask repeatedly that he respond to the question asked.

Mr. Armstrong: Your Honor, I am aware of that, and I shall certainly so instruct him to answer the questions [fol. 1254] directly as he possibly can and to pay closer attention, but the difficulty that I mention to the Court is that I noticed the jurors, on several occasions, glancing quickly to the bench at the time that the Court remonstrated, and I was afraid that the Court was conveying a feeling of disbelief on the part of the Court of what the witness was

saying by virtue of the Court's attitude. I know it wasn't intentional, but that was my feeling.

The Court: The Court cannot accept that comment or criticism. I think the record very well bears out that in each instance where the Court asked that the question be repeated, the answer given by the defendant had not been responsive to the question.

The Court will have to continue to ask every witness to answer questions responsively.

Mr. Alexander: It is tomorrow at 2:00 o'clock?

The Court: That's right.

Mr. Alexander: Thank you, your Honor.

[fol. 1255] Santa Monica, California—
Friday, December 2, 1955

2:00 O'clock P.M.

The Court: The jury is present. You may continue. I believe Mr. Alexander was cross examining.

Mr. Alexander: Yes, your Honor.

JOHN RUSSELL CROOKER, JR., the defendant, having previously been duly sworn, resumed the stand and testified further as follows:

Cross-examination (Continued).

By Mr. Alexander:

Q. Mr. Crooker, you told us that when you sent that telegram to Norma, "Have tried to contact you. Must leave for the day. Will return late. If unable to contact you by tomorrow, will proceed without further consideration," and you told us that by "proceeding" you meant by that you were going to tell her mother, is that right?

A. I was going to contact her mother, yes.

Q. And without which considerations were you going to proceed?

A. That I was going to contact her without being able to contact Norma again.

Q. And when you said, "proceeding without further consideration", you meant that you were going to proceed without [fol. 1256] contacting Norma again?

A. Yes.

Q. Now, had you told Norma that you were going to tell anyone else besides her mother?

A. Yes.

Q. And who did you tell her you were going to tell?

A. That I was going to discuss it with her family.

Q. By "her family", who do you mean?

A. Jack, and Mr. and Mrs. Thompson.

Q. Jack is her brother?

A. Yes.

Q. Now Mr. Thompson had fired you, had he not, from your job at the Thompson home?

A. Yes, sir.

Q. Had you had any relations of any kind with Mr. Thompson from the day he fired you?

A. No, sir.

Q. On these notes, which are People's Exhibit 34, by the way, when did you prepare People's Exhibit No. 34?

A. I don't know the date.

Q. Can you tell us the approximate date?

A. Well, since I have been arrested, and sometime in that period of time that I have been in jail.

Q. And People's Exhibit No. 34 was prepared in jail, is that right?

A. I can't be sure about that, either. It is possible I made [fol. 1257] them here. You see, I have been making these notes right along.

Q. As the witnesses would testify you would make notes, is that what you mean?

A. I have done it, yes.

Q. One of these notes start with "31;" and what is that next to it?

A. "Memorial."

Q. No, the——

A. Oh, excuse me.

Q. The letter before Memorial?

A. Tuesday—"Tu."

Q. Monday was the 30th, and the 31st was Tuesday. So

Memorial Day was on Monday, the 30th. Do you recall that now?

A. No, I don't recall it.

Q. Then we go to "1-W," that means the 1st of June, Wednesday, is that right?

A. Yes.

Q. Then we come to "2-Th.—quarrel." Does that now refresh your recollection as to when you had this quarrel with Norma?

A. That doesn't fix the date. As I said, it could be that Thursday or a previous Thursday. I was trying to fix it when I made that note.

Q. When you made that note your best recollection was [fol. 1258] on the 2nd of June?

A. That was as near as I could place it, yes.

Q. Now, up to the 2nd of June your relations with Norma were one of mutual love and respect, is that right?

A. If I am correct on this day, yes.

Q. Yes, up to the day of that quarrel, anyway. And you, of course, had that regard for her feelings and you loved her, is that right?

A. Yes.

Q. And this quarrel you told us was a slight lovers' quarrel, is that right?

A. Yes.

Q. Did you, on or about the 4th of June, address a letter to Norma McCauley?

A. That date doesn't mean anything to me.

Q. In the first week of June did you address a letter to Norma McCauley?

A. That date, that time doesn't mean anything to me. I, of course, have written many letters to her. I wouldn't recall that particular time.

Q. Now, on or about the 4th of June did you write to Norma McCauley as follows:

"As it is, I am aware of your intentions. You made them abundantly clear to me, especially after hearing the first writing of the context of this letter, you made the fact [fol. 1259] crystal-clear that you intended to attempt to purge every breath of our love from your life, and you mean to do this despite any effort or caution which I may direct toward you."

Did you write Norma McCanley about the 4th of June, 1955, did you write that to her?

A. If I have the letter which you have started to read correctly in mind, I did write such a letter, and it was in my apartment. It was never communicated between me and Norma, if I have the letter in mind.

[fol. 1260] Q. I am asking you, did you write Norma McCauley such a letter on or about the 4th of June of 1955?

A. I recognized the words and I am not sure of the date.

Q. Now, by the 4th of June, 1955, had she made it abundantly clear to you—strike that.

Had she made it abundantly clear, and had she made the fact crystal clear that she intended to attempt to "purge every breath of our love from your life"?

A. When I wrote that letter, that was my impression.

Q. What had she told you that gave you that impression?

A. It wasn't what she told me. She never did say to me that "we are through".

Q. What did she do or say that made it abundantly clear to you?

A. That letter—I am not answering the question—we had quarreled, that was on my mind, her demeanor; that is to say, her nervousness about our relationship, the strained feeling which she expressed to me made me feel that she had ended the relationship.

Q. And that occurred, to the best of your recollection, and according to the memoranda you made, about the 2nd of June?

A. I beg your pardon? The quarrel occurred about the 2nd of June or the previous Thursday.

[fol. 1261] Q. And that was the same quarrel you told me about, is that right? It wasn't another quarrel?

A. During the month of June?

Q. The quarrel on the Thursday following Decoration Day, is that the quarrel you are now referring to?

A. Yes.

Q. And did you also, in that same letter, on or about the 4th of June of 1955, say to her, "So I am sending this letter to you, praying that you have the courage born of past feelings and nurtured by future hopes to give expression to the bond which exists between us. Then if my prayers are for

naught, I will then write to your dad, to your mother, and to your brother separately. I will explain our love. I will explain that I am your husband in fact. I will describe the bond which exists between us. I will tell them the moral course and that if it isn't pursued I can do longer consider myself singly responsible before God, society, or myself, for the past, the present, or the future, and I will be relieved of a great burden."

Did you so write Norma McCauley on or about the 4th of June, 1955?

A. I recognize the words, and again I don't—I am not sure of the date.

Q. And you did write her to that effect, but the date you are not sure of, is that what you mean?

A. Yes, that is what I mean.

[fol. 1262] Q. When do you think you sent this letter to Norma McCauley?

A. I can't fix the date. If this is the letter which I think it is, I can't fix the date when you come to that part.

Q. Was it in June?

A. Yes, I think it was in June.

Q. Of 1955. And when you told Norma in this letter, "I will tell them the moral course and that if it isn't pursued, I can no longer consider myself singly responsible before God", and so forth, what did you mean when you said you will tell them the moral course, and that if it isn't pursued —what moral course did you want to pursue?

A. I don't know.

Q. Well, what did you mean when the wrote that to Norma?

A. I don't know.

Q. By "the moral course" were you referring to marriage?

A. I don't know. I would have to read the whole letter to get the context of the letter before I would be able to tell you.

Q. You could not marry Norma, could you?

A. At that time? No, I could not.

Q. Or at any time that you knew Norma?

A. No, sir.

[fol. 1263] Q. You were married, were you not?

A. Yes, sir.

Q. And what did you mean by "pursuing the moral course"?

A. I don't know, at this point.

Q. Do you know whether or not you actually sent such a letter to Norma?

A. As far as you have read, I do not know, no.

Q. Do you remember typing such a letter?

A. I do recall the words, yes.

Q. Do you remember posting that letter?

A. No, sir.

Q. And you say that the letter remained at your home?

A. As far as you have read it, I don't recognize the letter, sir.

Q. So far as I have read, they are just words to you, is that what you mean?

A. As far as you have read, I cannot place the letter.

Q. Do you have any recollection of such a letter?

A. Yes.

Q. Now you told us that the first money that you received was a loan arranged with U.C.L.A., that I think Norma became the co-signer on, is that right?

A. Yes, sir.

[fol. 1264] Q. When was that?

A. That would be in the late summer or the early fall of 1953.

Q. And how much was that loan?

A. I believe $300.00.

Q. And at or about the same time you also loaned some money from Mrs. Thompson, did you not?

A. Or shortly thereafter, yes.

Q. How much from Mrs. Thompson?

A. I believe that was $400.00. It was in two separate sums.

[fol. 1265] Q. And you wanted to buy an automobile and Norma loaned you the money for that, is that right?

A. Yes, sir.

Q. How much was that?

A. That was $400.

Q. And you gave her a paper evidencing that loan, did you not?

A. Yes, she tore it up.

Q. Just a minute; you gave her that paper?

A. Yes.
Q. And you tell this Court and jury that she tore that up?
A. So she told me, yes.
Q. She told you that?
A. Yes.
Q. You never saw that torn up?
A. No.
Q. You don't know of your own knowledge whether it was torn up or not, do you?
A. No, except what she told me.
Q. This automobile loan of $400 was when?
A It would be in July, I believe, 1954.
Q. What money did you receive from Norma after that?
A. I received an amount of money in September of 1954.
Q. How much?
[fol. 1266] A. I think at one time she telegraphed to my bank account something in the neighborhood of $150.
Q. And what else?
A. I don't know the other amount.
Q. When did you get this other amount?
A. I think right in the same vicinity of time in September, it could have been the first part of it.
Q. Well, about how much do you think it was?
A. I would say that would be around $150, something like that.
Q. What else?
A. Then, at Christmas of 1954 she gave me money to buy Christmas gifts with.
Q. How much?
A. Between $50.00, maybe $75.00, something like that.
Q. Keep going, Mr. Crooker.
A. And I believe that the last time she gave me an appreciable amount of money like that was in June of 1955.
Q. How much was that?
A. That was between $200 and $300.
Q. $250 of that you deposited on June 10th, as you told us yesterday, isn't that right?
A. I made a deposit of $250 on that date, yes.
Q. And that was in cash, was it not?
[fol. 1267] A. That $250, yes.
Q. And that was the money you received from Norma McCauley, wasn't it?

A. Part of it, yes.

Q. In addition to that you say Norma left money for you at the apartment?

A. Yes, sir.

Q. How much did she leave for you at the apartment?

A. I don't know how much.

Q. You never kept any records, did you?

A. No.

Q. Never kept any records of any of these loans, did you?

A. No.

Q. Did you make any payments on these loans?

A. Well, beyond what moneys I used to give her, no.

Q. Kept no records of that, either, did you?

A. No.

Q. Now, you told this jury on direct examination that you took this money believing that if your plans do not materialize that you would repay—what did you mean by that?

A. That I would recompense what help she had been to me.

Q. What plans did you expect to materialize?

A. We expected that we would marry.

[fol. 1268] Q. Did you take any steps toward getting a divorce from your life?

A. No.

Q. Did you keep any records of the amount of money you got from Norma so that you could repay her?

A. We did not keep records, no.

Q. I asked you, did you?

A. I did not keep records—May I correct that answer?

The Court: Yes.

A. I do have a little ledger that I kept part of the time that I think during maybe a couple of months in which I did note that I had received some of these moneys, but as far as keeping any record throughout the two years, no, we did not keep records.

Q. By the way, after this letter that you wrote, and you do not recall the date, it was after that that you received $300, approximately, from Norma, was it not?

A. Sir, I wouldn't be able to fix that; I don't know enough about the letter. I would have to see the letter.

Q. You want to see the letter?

A. I would have to see the letter to get some idea of when I wrote it, yes.

Q. With relation to the time you received $300, you can't fix the date you wrote the letter, can you?

[fol. 1269] A. Not so far, no.

Q. All right, Mr. Crooker——

The Court: Do you want that marked for identification?

Mr. Alexander: Yes, it consists of an envelope and two pages.

The Court: It may be marked People's Exhibit 37 for identification.

Mr. Alexander: And on the back of the envelope may I mark "37" with a circle around it?

The Court: Yes.

By Mr. Alexander:

Q. Directing your attention to the second page of this letter, the signature "John," is that your signature?

A. I would say so, yes.

Q. Will you look at it?

A. Yes, I would say so, sir.

Q. It is your signature, isn't it, sir?

A. I think so, yes.

Q. Do you have any doubts?

A. No.

Q. Will you read that letter, please?

A. (Perusing letter.)

Q. Now, would you look at the envelope, please. Do you now recognize People's Exhibit No. 37 as a letter you wrote and mailed to Norma McCauley on the 4th day of June, 1955?

[fol. 1270] Q. And you start that letter, "My dear wife"?

A. Yes, sir.

Q. And you finish that letter, "Your husband, John"?

A. Yes, sir.

Q. Now, I will ask you, was it after you sent this letter on the 4th of June, 1955, that you received the sum of $300, approximately, from Norma?

A. Yes, sir.

Q. You know Mr. Fred Chel, do you not?

A. Yes, sir.

Q. He was a school mate of yours, was he not?

A. Yes, sir.

Q. A close friend of yours, wasn't he?

A. Yes, sir.

Q. It was his notebook you were using in torts?

A. Yes.

Q. The same notebook you got from Norma on the 18th of June, isn't that right?

A. As far as the date is concerned, of course, I am not sure of that, but the same notebook I got from Norma, yes.

Q. Around the end of May or the early part of June, did you, in the evening, phone Fred Chel and tell Fred Chel there was a final breakup in your relations with Norma?

A. Not that I recall, sir.

[fol. 1271] Q. You might have made that call?

A. No, not and say that, no. I might have called him but not say that.

Q. Did you tell him that in substance or effect?

A. Not that I recall.

Q. Do you know any reason why Fred Chel would come into court and say you made that call to him if you did not?

A. Yes.

Q. You do know of a reason?

A. Yes.

Q. Tell us what it was.

A. Through this month of June, as I understand it, Fred Chel was having many conversations with Norma about which I knew nothing. He got the impression from Norma, consequently, from those conversations, he got an impression from me from my conversations; and it is my feeling he has confused the two sources of information.

[fol. 1272] Q. What did you say to Fred that might have given him that impression?

A. I told Fred, for example, that I had considered—I was considering or had considered—I can't remember exactly when I made this phone call in this respect, going back to Maine.

Mr. Alexander: May I have the last answer, please?

(Reporter reads last answer.)

Q. That is your answer to that question? Well, strike that.

Now, let me see. You occupied Apartment 5 at 5128 Marathan, did you not?

A. 105.

Q. 105?

A. Yes.

Q. And was your telephone Hollywood 28052?

A. Yes, sir.

Q. And that was listed under the name of John R. Crooker, Jr., was it not?

A. Yes, sir.

Q. You could not remember Norma's number yesterday, but would it refresh your memory if I told you that Norma's number was Granite 25772?

A. Yes.

Q. That is her number, is it not?

A. Yes.

[fol. 1273] Q. Now, let's take the 18th of June, 1955. Did you call Norma at 8:18 a.m. of that day?

A. I wouldn't know, sir.

Q. And did you call her on that same day at 9:04 a.m.?

A. I wouldn't recall it.

Q. The 18th of June was a Saturday. Do you recall that? His Honor told us that yesterday.

A. I recall that, yes.

Q. And it was on a Saturday that you went to Norma's house, was it not, to pick up that notebook?

A. I don't know the date.

Q. And on the 18th of June, the same day, did you call her at 7:38 a.m.?

A. I wouldn't recall these times, no.

Q. And on the same day did you call her at 1:09 p.m.?

A. I wouldn't recall.

Q. And on the same date did you call her at 8:00 a.m.?

A. I wouldn't recall.

Q. And on the same day did you call her at 7:33 a.m.?

A. As I say, I wouldn't recall.

Q. Well, can you think of a reason now why in one day you would make six calls to Norma?

A. Yes, sir.

Q. And that would be from 7:33 a.m. to 1:09 p.m.?

A. Yes, sir.

Q. Why would you call her six times from 7:33 a.m. to [fol. 1274] 1:09 p.m. on one day?

A. Well, for example, whenever I called Norma and she could not talk with me because someone would be there, she would hang up and call me back. That is one thing that could happen.

Another thing that could happen is that I could call her —she would let the phone ring and then she would call me back after I had done that two or three times. That is another thing that could happen. That was done invariably since I had my apartment phone.

Q. It was a toll call from your house to Norma's house, was it not?

A. Yes, it was.

Q. And where she would not answer, you would not be charged for that call, would you? Wasn't that the purpose of letting it ring several times?

A. I don't know whether or not there would be a charge on that. As a matter of fact, I don't know enough about the telephone service.

Q. Let's come back to June 22nd. Did you call her that morning at 7:30 a.m.?

A. This is June 2nd?

Q. June 22nd of 1955.

A. I did call her that morning, yes.

Q. At 7:30 a.m.?

A. I wouldn't know the exact time. It was quite early in [fol. 1275] in the morning.

Q. And did you complete your conversation with her?

A. On June 22nd?

Q. Yes.

A. Yes.

Q. And then did you at 8:19 a.m. call her again?

A. We had several conversations. I couldn't be exact about the time.

Q. Did you then call her again at 1:51 p.m.?

A. It is possible.

Q. And did you call her again at 3:22 p.m.?

A. Again it is possible.

Q. And did you call her again that same day at 2:38 p.m.?

A. Again it is possible.

Q. And on the same day did you call her again at 12:30 p.m.?

A. Again it is possible.

Q. And on the same day did you call her at 10:41 a.m.?

A. Again it is possible.

Q. And on the same day did you call her at 3:43 p.m.?

A. That time of day—a.m.——

Q. I said p.m.

A. Oh.

Q. 3:43 p.m.

A. Oh, yes. That is possible.

[fol. 1276] Q. And on the same day did you call her at 5:47 p.m.?

A. That, too, is possible.

Q. And on the same day did you call her at 6:06 p.m.

A. That is possible.

Q. And on the same day did you call her at 5:35 p.m.?

A. That is possible.

Q. And on the same day did you call her at 5:02 p.m.?

A. That is possible.

Q. And on the same day did you call her at 5:13 p.m.?

A. That is possible.

Q. So——

A. (Interrupting) May I change my last answer?

The Court: Yes.

Mr. Alexander: If you want to correct it to tell the truth, certainly.

Mr. Armstrong: I will object to that type——

Mr. Alexander: (Interrupting) I am sorry. I did not mean it that way.

[fol. 1277] The Witness: All of these calls which I say are possible allude to my description of how we used the telephone, of course.

By Mr. Alexander:

Q. And you would say that thirteen calls in one day to Norma was the average number of calls you would make?

A. No.

Q. Now, let us take the 23rd of June. That would be the following day. Did you call her at 10:29 a.m.?

A. Again, I wouldn't know the time, but it is possible.
Q. And at 9:39 a.m.
A. It is possible.
Q. And at 8:02 a.m.?
A. It is possible.
Q. And at 8:51 a.m.?
A. It could be, yes.
Q. And at 11:39 a.m.?
A. Possibly.
Q. And at 3:29 p.m.?
A. Possibly.
Q. Was there any reason why so many calls were made by you to Norma on the 22nd and on the 23rd of June?
A. On the 22nd, of course, I have a very specific reason for the calls that I do know of.
Q. And on the 23rd, do you have any reason for calling [fol. 1278] her so many times?
A. Unless an extension of my reason on the 2nd—on the 22nd, rather, no.
Q. Now, on the 17th of June, did you call Norma at 7:56 p.m.?
A. As I say, I don't have any specific recollection about the date or the time, but it is possible.
Q. Now, if you called her at 2:07 a.m., you would remember that, would you not?
A. Not necessarily, no.
Q. Did you call her on the 17th of June at 2:07 a.m.?
A. It is possible.
Q. And again at 9:55 a.m.?
A. It is possible.
Q. And again at 9:12 a.m.?
A. I could have.
Q. And again at 7:51 p.m.?
A. Possibly.
Q. Now, these calls were all made from your home, were they not?
A. Of course, that was not the only phone that I used in calling Norma.
Q. You mean, in addition to the calls that you made from HOllywood 20852 on the 17th, the 22nd and the 23rd of June, as I enumerated, you might have called from other places, too?

[fol. 1279] A. No, I don't mean that. I mean that I have used other phones in calling Norma, and it could be that on those dates I—well, no, on those specific dates, the 22nd and the 23rd, for example, I wouldn't be using any other phones that I recall, to call.

Q. Did anyone else live in this apartment on Marathon with you?

A. No.

Q. Now, let us come to the 24th of June. Did you call her at 10:17 p.m.?

A. Again, it is possible.

Q. And at 9:19 a.m.?

A. Possibly.

Q. And at 10.04 a.m.?

A. Possibly.

Q. And at 3:54 p.m.?

A. Possibly.

Q. And at 3:00 p.m.?

A. Possibly.

Q. And at 4:46 p.m.?

A. Again, it is possible.

Q. And at 8:05 p.m.?

A. Possibly.

Q. Now, on the 25th of June, did you call her at 8:04 p.m.?

A. It is possible.

[fol. 1280] Q. And at 7:39 p.m.?

A. It is possible.

Q. At 7:48 p.m.?

A. It is possible.

Q. At 7:14 p.m.?

A. I could have, yes.

Q. At 2:22 p.m.?

A. It is possible.

Q. At 7:35 p.m.?

A. Possibly.

Q. At 7:01 p.m.?

A. Possibly.

Q. At 7:24 p.m.?

A. Possibly.

Q. At 8:03 a.m.?

A. Possibly.

Q. As a matter of fact, on some of these calls when Norma would answer, you would hang right up, isn't that right?

A. When Norma answered?

Q. Yes.

A. No.

Q. At other times when she heard your voice she would hang up, isn't that true?

A. She has done that, yes.

Q. Now, you told this court and jury yesterday that you [fol. 1281] and Norma went to the Sapphire Cafe because that was in the southwest part of town and Norma did not want to be seen. Do you recall that?

A. Yes.

Q. And after the Sapphire Cafe, you used to frequent the Pacado Cafe, was that?

A. The Piccador. We didn't frequent it, but we have been there.

Q. And that, too, was in the southwest part of town, was it not?

A. Yes. It is a little east and quite a lot more south.

Q. Now, as a matter of fact, you at one time lived at 8307 South Figueroa, did you not?

A. Yes, sir.

Q. Your wife and children still live there, do they not?

A. Yes, they do.

Q. When did you leave 8307 South Figueroa?

A. I lived there in '51, I believe, 1951, I believe. That was the correct date—that is the correct year, rather.

Q. You think it was in 1951 that you left there?

A. That I lived there last, yes.

Q. Weren't you afraid of being seen in the south part of town?

[fol. 1282] A. No, sir.

Q. It didn't bother you at all, did it?

A. I didn't think that anyone would recognize me there at the Sapphire Club, no.

Q. Now, let's come back to the 3rd day of July of 1955. On that day, you were in love with Norma McCauley, were you not?

A. Yes.

Q. You still had those tender feelings towards her?

A. Yes.

Q. And on that day you left your home you drove to the McCauley residence?

A. Excuse me, you are talking about the 3rd day of July?

Q. Yes, 3rd day of July.

A. Yes.

Q. You left the McCauley residence, or went to the McCauley residence?

A. Yes.

Q. You told this jury you had an appointment to meet Norma.

A. Yes.

Q. Was an hour fixed for that meeting for the 3rd of July?

A. No.

Q. What time did you think the meeting was for?

[fol. 1283] A. Now may I say what Nor a told me?

The Court: That was not the question. Repeat the question.

(Question read.)

A. Sometime during the evening, whenever she got home.

Q. No definite hour of the evening was fixed?

A. No.

Q. Could have been 9:00 o'clock in the evening or it could have been 5:00 o'clock in the morning?

A. Not very well 9:00 o'clock, but, of course, I did not expect it to be 5:00 o'clock.

Q. What time did you arrive at the McCauley residence that night?

A. About 10:30 or 11:00 o'clock, about that time.

Q. Did you know that Norma was at a little barbeque at her parents' home that night?

A. Yes, I did; she was having guests there, yes.

Q. How did you know that?

A. She told me.

Q. When did she tell you that?

A. On Sunday.

Q. Did you know she had spoken to your friend, Fred Chel, on that same Sunday, July 3rd?

A. No, I did not.

Q. Chel didn't tell you that, did he?

[fol. 1284] A. No, he did not.

Q. Norma didn't tell you that, either, did she?

A. No, she did not.

Q. When you arrived in the vicinity of the McCauley home you parked your car at what you said was Chalon and Somera Drive, is that right?

A. Right.

Q. And you walked from that point to the McCauley home uphill, is that right?

A. This is after I drove up by, and then drove by, and then parked, yes.

Q. On that night of July 3rd, 1955, you and Norma were in love with each other, were you not?

A. Yes—May I change that answer to say that my feelings had not changed.

Q. You still were in love with Norma.

Why did you park the car down below the intersection of Chalon and Somera and walk up?

A. Because Norma asked me to.

Q. She asked you, you say, to park there?

A. Yes.

Q. For any reason?

A. Yes.

Q. Tell us what the reason was.

A. She thought someone would recognize the car.

Q. That is, your car?

[fol. 1285] A. Yes.

Q. And you came up and walked up Somera and came down alongside the garage, and you went to a tree that has been indicated on Defendant's Exhibit 1, is that right?

A. Except I went across the vacant lot, not on the McCauley property at that time.

Q. There is a vacant lot?

A. That's right. I went across the vacant lot, and then in the vicinity of the tree, yes.

Q. You had never met Laurie Dromtra, the maid, had you?

A. No.

Q. You didn't know she was working for Norma, did you?

A. No.

Q. And at one time or other you satisfied yourself that the light in the maid's room was out?

A. Yes.

Q. Now, from the time you arrived there at 10:30 or 11:00 o'clock, whenever it was, until you left that house, did anyone other than Norma enter that house?

A. Not that I know of.

Q. Can you describe this tree that you marked as B-1, what kind of a tree was this?

A. I don't know the name of the tree. It has a short [fol. 1286] trunk, and the tree just extends out over the bank and, well, I don't know how to describe the foliage on it. It is globular-shaped, but it is not a well-proportioned tree.

Q. Comparing your height, is it taller than you?

A. Oh, yes.

Q. About how much taller than you was this tree?

A. It is difficult to judge the height of it because of its direction, the way it points.

Q. If it extended straight up how much higher than you did that tree go?

A. I wouldn't want to judge that.

Q. And you climbed up that tree to get a better view of Somera Road?

A. I didn't climb up it; I climbed on the branch that extends out.

Q. The lowest branch, did you climb on the lowest branch?

A. I don't know if it is the lowest branch; it is the main —it is a heavy branch.

Q. I show you People's Exhibit No. 10; that does show this westerly area of the house, does it not?

A. I don't think you got that tree in here, Mr. Alexander; it is not that shrub.

Q. It is not that shrub or clump or bush, whatever it is? [fol. 1287] A. No, it is not, no.

Q. It is another one?

A. That could be it; I don't think it is, but I am not sure of it from that position.

[fol. 1288] Q. Will you look at it again, please; when you say it could be it——

A. I can't tell from that.

Q. Do you see the trunk of it at all?

A. I really don't—do I see a trunk there, no.

Q. You now do not know whether that is the tree you have been referring to?

A. Not from that picture, no.

Q. Now sometime or other you satisfied yourself that the maid had gone to bed, or the light went out, in any event?

A. Yes.

Q. About what time did that occur?

A. About 11:30.

Q. And while you were standing by this tree, a light between D9 and D-10 went on an off, is that right?

A. Yes.

Q. And a car——

A. May I say when the car came I was on the banking; that is to say, the tree is almost in the corner of the lot; the line of the lot adjacent to the vacant lot—when the car came I was on the bank and the light turned on while I was on the bank. Then I went back and could not get a view of the car from where I was, and tried to get on the tree to get a view of the car.

Q. That car remained there about three-quarters of an [fol. 1289] hour, did it?

A. Just about, I would say.

Q. When that light went on an off, did you become suspicious of anything?

A. Yes, I did. I thought someone had gone into the house. I heard the door of the car click, but didn't think anyone got out and couldn't figure the light out, as a matter of fact.

Q. Your answer is yes, is that right?

A. Yes.

Mr. Alexander: May the rest of the answer be stricken out?

The Court: The rest of the answer may be stricken out.

By Mr. Alexander:

Q. You lived in that house for some time, did you not?

A. Yes.

Q. Where is the switch to that light?

A. I believe it is — there is a switch right inside the kitchen door, and I think it is right on the right, in back of

the refrigerator; and I think there is also a way to turn those lights on in the garage, if I am correct.

Q. How long after that light went on and off did that car remain there?

A. Maybe fifteen minutes, something like that; could have been anything in that period of time.

Q. In those fifteen minutes you could have walked from [fol. 1290] that tree on to the lot that you used to come into the McCauley property and look at the license number of the car, could you not?

A. Yes, sir.

Q. You did not do so, did you?

A. No, sir.

Q. You remained by that tree?

A. Yes, sir.

Q. Now, ultimately you opened some windows of the sliding glass door, which you showed us, between the covered patio and the dining room, is that right?

A. Yes, that is the door.

Q. Did you make any noise sliding those windows?

A. They made a little noise.

Q. And you walked into that dining room, into the kitchen of that home?

A. Yes.

Q. There you took a glass of water?

A. Yes.

Q. You smoked?

A. Yes.

Q. You stayed about fifteen or twenty minutes?

A. I actually smoked in the area of beyond the bar and kitchen; you see, that is the open space there. That is where I actually smoked.

Q. By the way, to get your glass of water, you turned this [fol. 1291] faucet on?

A. Yes.

Q. Where did you get this glass?

A. Right there. The glasses are right there on the bar.

Q. And by the bar you mean the one marked "breakfast bar"?

A. Yes.

Q. And you went into that bar and took a glass and went to the sink and turned the water on?

A. Yes.

Q. And filled the glass?

A. Yes.

Q. You had your drink and put the glass down?

A. Yes.

Q. And someplace as you say in there (indicating on diagram) you smoked?

A. Yes.

Q. And then you walked from that kitchen through the entrance hall, through the hall, past the maid's room, did you not?

A. Yes.

Q. Past the maid's room into the nursery?

A. Yes, I stopped at the heater room first.

Q. Is there a door to that?

A. Yes, they have these open-out doors.

[fol. 1292] Q. You opened the doors?

A. Yes, that door actually was not latched, but I did open it.

Q. You opened the door?

A. Yes.

Q. And from there went through this hallway past the maid's room?

A. Yes.

Q. Past the bathroom into the nursery, is that right?

A. That's right.

Q. Now when you slid those sliding glass doors, you walked into the dining room, got that glass, turned the water on, smoked, walked to the entrance hall, opened the door of the heater, through the hallway, past the maid's room, into the nursery—did you have any fear of arousing the dog?

A. I considered the dog, as a matter of fact, I didn't see—I considered the dog, yes. That is my answer.

Q. Did you arouse the dog?

A. No.

Q. Was the maid's room slightly opened as you passed it?

A. It was.

Q. Did you look in?

A. No.

Q. Did you see the dog there?

[fol. 1293] A. I didn't see the dog that night, no.

Q. And you walked into the nursery, and what was the first thing you did after you got to that nursery?

A. I think I went right over to the closet, that is the first thing.

Q. This closet marked "F", is that right?

A. Yes.

Q. And you went into the closet, did you not?

A. Yes, I eventually went into the closet, yes.

[fol. 1294] Q. What time do you think it was when you went into that closet?

A. I think about 2:30.

Q. 2:30 in the morning?

A. Yes.

Q. That would be 2:30 in the morning of July 4th?

A. Yes.

Q. And you found that you could fit into that closet?

A. Yes.

Q. Was that the first time you ever hid in that closet?

A. Yes.

Q. Did you have any reason for hiding in that closet that night?

A. Yes, sir.

Q. What was the reason, tell us, please.

A. Norma felt that—— Can I say what she said?

Q. I want to know the reason you had for hiding in that closet.

A. Because there was a possibility that Norma would be escorted home. If she was, I was not to be seen.

Q. You had no idea when she would come home, did you?

A. No.

Q. You left that tree at what time.

[fol. 1295] A. I think that car was there about 12:30 or something like that; left it about 12:30.

Q. When did you go through the sliding doors; about what time did you do that?

A. About 1:30 or quarter of 2:00, something like that.

Q. And you got into the nursery between 2:00 and 2:30, I think you told us?

A. Something like that.

Q. Was there any reason why you couldn't have waited by the tree till Norma came home?

A. She was afraid I would be seen.

Q. You stayed for how long before you went into the house?

A. Well, from about 11:00 or 11:30 until about 1:30 or quarter to 2:00.

Q. Were you afraid you would be seen during the time you stayed there?

A. Yes, sir.

Q. In any event, with your fears you did stay there?

A. Yes, sir.

Q. You could have gone to any part of the back of that house and waited for her, could you not, on the outside?

A. Yes, I could have gone.

[fol. 1296] Q. But you did not do so?

A. No.

Q. You chose the closet to make sure if Norma were escorted home nobody would find you?

A. Yes.

Q. Norma told you that, did she, she told you to hide in that closet?

A. That's right.

Q. Is there any reason why the closet was chosen?

A. Yes, sir.

Q. What was that reason?

A. It was empty.

Q. How long did you remain in that closet?

A. I was in and out of it until about a quarter of 4:00, and, well, I must have been in it; well, I was in and out of it, actually until a quarter of 5:00 and was in it all of that hour, between a quarter of 4:00 and a quarter of 5:00 and probably a half, three-quarters of an hour of the time other than that.

Q. Norma came home about what time?

A. A quarter to 4:00.

Q. A quarter to 4:00 in the morning?

A. Yes.

Q. And you know that because you heard her, is that right?

A. That's right.

[fol. 1297] Q. How long after she came home did you get out of that closet?

A. About an hour.

Q. Why did you stay in that closet that hour after Norma came home?

A. Because there were two cars which came. I heard both cars and because, again, I was told to do just that.

Q. Norma knew you were hiding in that closet, did she?

A. Yes.

Q. And she knew you were hiding from the time she came home until 4:45 in the morning?

A. Yes.

Q. How did you fix 3:45 as the time Norma came home?

A. Because of going back to the time, going back on the time after I had found out about what time it was when she had finally come in and get me out of the closet.

Q. Sometime while you were in the nursery you found a glass in the nursery, isn't that right?

A. Yes.

Q. Was that glass—— (Do you have that, Mr. Honeycutt?)

People's Exhibit No. 30, that looks like the glass, does it not?

A. Yes, it looks like it, yes.

[fol. 1298] Q. Where did you find that glass?

A. On the children's shelf.

Q. Where is that?

A. That would be right there, if that drawing is correct.

Q. It is marked "Shelf"?

A. Yes.

Q. And it appeared to you that one of the boys had taken a glass of water there and left the glass?

A. I don't know how it got there.

Q. At least there was no liquid in it when you got the glass?

A. No.

Q. And it was standing on the shelf in there, and you took that glass and went back into the closet, and hid there with the glass, is that right?

A. Yes, sir, when I got through with the glass I put it on the shelf in the closet, yes.

Q. What time do you think you urinated in that glass?

A. I don't know.

Q. Look back as you did before and try to fix the time.

A. Well, I wouldn't say, I wouldn't be able to fix the time of that, when I used the glass to urinate in. I don't recall.

[fol. 1299] Q. Was it between the time Norma came home and the time that she let you out of the closet?

A. No.

Q. It was before that?

A. Yes.

Q. Before Norma came home?

A. Yes.

Q. You knew that there was an exit from Norma's bedroom, did you not?

A. Yes.

Q. And you knew you could have walked out the children's nursery, did you not?

A. Yes.

Q. And had you wanted to relieve yourself, you could have walked right out those doors, could you not?

A. I could have, yes.

Q. Any reason why you didn't?

A. Yes, sir.

Q. And what was that reason?

A. I wasn't to be seen.

Q. There was a kind of a fence up here that protected you, wasn't there (indicating)?

A. On the front, yes.

Q. And you could have walked around to the back of that house very easily, could you not?

A. Well, I could be—to answer your question, I could [fol. 1300] be seen all along that side, as I described, I think on one other point. You can see—and, in addition, the maid's room is right adjacent to those doors.

Q. When you were in that kitchen, smoking, were you afraid you would be seen there?

A. Yes, sir.

Q. But still you remained in that kitchen with that fear?

A. Yes.

Q. Was there any change between the time you were in the kitchen and the time you hid in the closet?

A. Well, the difference in the—in where I was. When I was smoking, I was right by the bar. I was right by the sliding door, so if I were seen inside the house, I could go

through that sliding door again and could always go outdoors.

Mr. Alexander: What was the answer again, please?

(Reporter reads the answer.)

Q. Is that why you choose to smoke in the kitchen?

A. Yes, sir.

Q. Now, had Norma come home and come through the doorway into the kitchen with an escort, they could have smelled that smoke, could they not?

A. Possibly.

Q. Were you afraid of that?

A. Yes.

[fol. 1301] Q. But that did not deter you from smoking in that kitchen?

A. No. I did not close that door until after I had smoked, I did not close the sliding door.

Mr. Alexander: Does your Honor wish to take a recess at this time?

The Court: Do not discuss the case among yourselves nor talk to anyone about it, nor allow anyone to talk to you about it. Do not form nor express any opinions or conclusions about the case until the matter is finally submitted to you.

We will take a ten-minute recess.

(Short recess.)

The Court: The jury is present. You may resume, Mr. Alexander.

By Mr. Alexander:

Q. Now, you are certain that from the time that Norma McCauley came home in the early morning of July 4th, until you spoke to her, you remained in that closet?

A. Yes, all the time.

Q. From the time she came home, did you hear any voices in that house?

A. I thought that I heard someone come into the room, and I thought that I heard whispers, but I am not sure about the whispers, and I am not actually sure that I heard

[fol. 1302] someone come into the room, but I did hear noises at that time.

Q. I will repeat my question. From the time Norma came home until the time you came out of that closet, did you hear voices?

A. I thought I did.

Q. Male or female?

A. I couldn't tell.

Q. And from where did those voices come?

A. I couldn't tell.

Q. You couldn't tell from what direction?

A. No.

Q. What part of the house?

A. No.

Q. Then eventually you did have a conversation with Norma, is that right?

A. Yes.

Q. And she told you, "they" found out about your relations, is that right?

A. Yes.

Q. She didn't say, "someone" found out. She said "they" found out, is that right?

A. She said someone had.

Q. What did she say, "they" or "someone"?

A. She said "someone" had, and I said, "Who?"

And she said she didn't know who, and we referred to [fol. 1303] them as "they"—she referred to them as "they".

Q. Did you ask who this "someone" or "they" were?

A. Oh, yes.

Q. And what did she say about that?

A. She wouldn't tell me.

Q. What did she say?

A. She said she didn't know who they were.

Q. And did she tell you how she found out "they" knew about it?

A. No.

Q. Did she tell you she had received a letter of any kind?

A. She didn't tell me, no.

Q. Did she tell you she had received a telephone call of any kind?

A. She said she had received phone calls, yes.

Q. And, of course, those were not the phone calls you had made to her, were they?

A. No.

Q. And then before you left, you told her to empty that glass, People's Exhibit 30?

A. I am not sure just how that came out, but I did tell her that the glass was there, and I think I was going to go back there and get the glass, and she said no, that it was so late that we were both very anxious about my leaving.

[fol. 1304] Q. You had been about those premises since about 11:30—11:00 o'clock?

A. About 11:00 or 11:30.

Q. You were there from 11:00 o'clock until—what time was this, now?

A. When I left?

Q. Yes.

A. 6:00 o'clock, about.

Q. And it was at that time you realized it was getting late, or you became nervous—what was that?

A. Yes.

Q. And that was the reason you told Norma to empty that glass out?

A. After I had—I think I told her—I think I started back there to get it and she said, "No, you have got to leave," and so I told her, "Well, to be sure that you do take it out of the room."

Q. Then you promised that you would never see her again?

A. I did promise her that, yes.

Q. Now, you carried these exhibits that were shown to you in the glove compartment of your automobile, did you not?

A. You mean the letters?

Q. For instance, this exhibit I-12.

A. Yes, all of those letters.

[fol. 1305] Q. All of them were carried in the glove compartment of your own automobile, is that right?

A. All of those letters, yes.

Q. Did you have any reason for carrying them in your glove compartment?

A. Yes.

Q. Did you feel they were more secure there?

A. Yes.

Q. You notice on Defendant's Exhibit K-2, in the upper right hand corner of the envelope there is a tiny 5 with a line under that. Did you place that number on that envelope?

A. No.

Q. From the time you received I-2 until the time the police took that note, was that note out of your hands?

A. Yes.

Q. Who had it?

A. Would you repeat the question?

Q. Read it.

(Reporter reads the record.)

The Witness: From the time I received this until the time the police got it, it was out of my hands? No.

By Mr. Alexander:

Q. Do you have any idea of who put that tiny "5" on that People's Exhibit I-2?

A. I presume Norma put it on there.

[fol. 1306] Q. That is your presumption?

A. Yes.

Q. Now directing your attention to Defendant's Exhibit I-5, you notice a tiny "8" in this corner (showing same to witness)?

A. (Examining same.) It looks like an "8", yes.

Q. Did you place that there?

A. No.

Q. Do you know how that got there?

A. No.

Q. Now I will direct your attention to Defendant's Exhibit I-7 in the upper right-hand corner. Can you make that out? (Showing same to witness.)

A. (Examining same.) I don't know what that mark is.

Q. It looks like a "6", does it not?

A. I wouldn't be able to say what it was.

Q. In any event, did you put that mark there?

A. No, I don't think so.

Q. Was this the first time you noticed those numbers on these exhibits?

A. Yes, sir.

Q. They have been in your possession for how long?

A. Well, they have been in my possession since I have received them, and I have received them since September of 1954. These particular exhibits, sir? I am talking about the letters, all of the letters.

Q. When Norma told you about being so frightened on [fol. 1307] the early morning of July 4th, did you make any effort to destroy any of the evidence that would associate you with Norma?

A. No, I did not.

Q. You continued carrying the letters around in the glove compartment of your automobile?

A. Yes, sir.

Q. Did you have any letters in the glove compartment of your automobile from you to Norma?

A. Yes, sir.

Q. Letters that you had sent to Norma?

A. Yes, sir.

Q. How long had you been carrying them in the glove compartment of your car?

A. Since the fall of—I will fix the time—I was going to say since the fall of '54. I am not exactly sure when she gave me all of those things to keep.

Q. For safe keeping, was that?

A. Yes.

Q. Now as a result of what Norma told you, as you say, on the early morning of July 4th, that night you returned to the McCauley property, is that right?

A. I am sorry. Would you read the question, please?

(Whereupon the reporter read the following question: "Q. Now, as a result of what Norma told you, as you say, on the early morning of July 4th, that night you returned [fol. 1308] to the McCauley property, is that right?")

A. That is true.

Q. What time did you arrive at the McCauley property, then?

A. About 11:30.

Q. You came directly from your home——

A. (Interrupting) Between 10:30 and 11:30, about that time.

Q. You came directly from your home?

A. We are now talking about the 4th, and if you will

please excuse me, I drove to Bel-Air on that day at about 2:30, 3:00 o'clock in the afternoon.

Q. You told us—you drove past Norma's house, did you not?

A. Yes, first drove up past—about 4:00 o'clock in the afternoon.

Q. You saw the children playing on a neighboring lawn?

A. That is correct.

Q. And Norma's car wasn't in the garage?

A. Her car was in the garage.

Q. It was in the garage at that time?

A. Yes.

Q. Did you have any fears of being seen at that time?

A. Yes, I had an anxiety about it.

Q. You had promised Norma that you would keep away [fol. 1309] from her, did you not?

A. Yes.

Q. You wanted to do nothing to upset her, is that right?

A. That's right.

Q. And you drove directly past her house, up Somera Road?

A. Yes.

Q. Then you drove by again, did you not?

A. Turned around and drove back down, yes.

Q. When you drove back, did you have any fears of being seen at that time?

A. Yes, I had an anxiety about it.

Q. Then you drove to the U.C.L.A. parking lot?

A. Eventually, yes.

Q. What did you do in the meantime?

A. I parked for a little while on the dead end of Chalon Road, then I drove down Chalon Road and down Sarbonne and up Stradella, past her mother's home, and parked until about 4:00 or 4:30.

Q. Why did you drive past her mother's home?

A. To be on the other side of the canyon.

Q. What was your purpose in doing that?

A. So that I could see whomever came up the canyon towards Norma's home.

Q. You could see Norma's home from the vicinity of [fol. 1310] the Thompson's home?

A. Well, from the vicinity of Stradella, yes. I moved

out of that dirt place, for example, where I was parked. You could get a perfect view of the home.

Q. And you could see the license number of any car from that view?

A. No, you couldn't.

Q. And you observed bathers at the Thompson home, did you not, people bathing there?

A. Actually I think that I did see a man there. I heard other voices, too. I think I—in fact, heard a child's voice.

Q. And were you looking for these blackmailers at the Thompson home? Is that why you went there?

A. No.

Q. Weren't you afraid of being seen when you went to the Thompson home, or the vicinity of the Thompson home?

A. Yes, I had an anxiety about it.

Q. And how long did you remain at that vantage point?

A. Until about 4:00 or 4:30, right around that time.

Q. Then what did you do?

A. I drove back down Stradella, and as I recall, I went out the Stone Canyon exit again and drove to U.C.L.A.

Q. There at the law building you parked your car?

A. Yes.

Q. And you then phoned the taxicab?

A. Yes, I made another call before that.

[fol. 1311] Q. Eventually you phoned for a cab?

A. Yes.

Q. And that cab driver drove you past Norma's home again, did he not?

A. Yes. He went up—I told him to go up—that there was a turn-around up the street.

Y. And you stayed in the cab while he made the turn and came back?

A. Yes.

Q. Were you afraid of being seen at that time?

A. I had the same anxiety about it, yes.

Q. Now you had some conversation with that cabby on the way up, did you not?

A. We had very little, but we did have some, yes.

Q. You remember telling him you were looking for a house to rent in that neighborhood?

A. No.

Q. Would you say you did not tell him that?

A. I would say that very definitely.

Q. Do you remember you told him to drive up Somera Road, but you give him no particular house number?

A. I told him 1100, when he picked me up and asked me where I wanted to go.

Q. When he dropped you off at the McCauley residence, what time of the day or night was that?

A. That was about 5:30.

[fol. 1312] Q. And what did you do?

A. Walked out on the lawn——

Q. (Interrupting) The lawn of the McCauley home?

A. That's right.

Q. Were you afraid of being seen at that time?

A. Yes, I had an anxiety about it.

Q. Then what did you do next?

A. I looked from the patio in through—you can see the kitchen area and the living room area—and discerned that there was no one there. I felt that there was no one there. I didn't think that there was anyone there when I arrived there.

Q. In fact, you saw the car out of the garage and you knew there was nobody there?

A. I felt that there was nobody there.

Q. Then what did you do?

A. I walked back to the cab, paid him, and then walked back out on the lawn.

Q. You mean that you got out of the cab, walked back to the patio area, looked through the house, then went back and paid the cab?

A. That's right.

Q. How long did that take you?

A. Just momentarily.

Q. What was your purpose in doing that?

A. I wanted to be sure that there was no one there, or I [fol. 1313] would just keep going if the maid were there. However, I had called and the car was gone, and I felt that no one was there.

Q. And at that time the taxicab was parked right in front of the McCauley home, wasn't it?

A. That's right.

Q. And after you dismissed the cab, what did you do?

A. Walked back out on the lawn.

Q. The front lawn of the McCauley home?

A. Yes.

[fol. 1314] Q. You still had your fears at this time?

A. No, at this time, being quite certain there was no one there, my anxiety of being seen there and out on the lawn area, so that I couldn't be seen from the street, were practically removed.

Q. Well, at that time was it your fear of being seen, or were you looking for these blackmailers?

A. I had gone to the vicinity of the McCauley residence to see what I could see.

Q. Your purpose was to find the blackmailers?

A. To see who was bothering Norma.

Q. Yes, and if she weren't home she could not be about it, could she?

A. That is true.

Q. Then what did you do after you discovered nobody was home and you dismissed the cab?

A. I stayed there in the vicinity of the tree and the bank.

Q. That same tree, D-1?

A. Yes.

Q. What was your purpose in staying at that tree at that time?

A. To see if anyone came there to her home.

Q. How long did you remain at that tree?

A. Until about 9:30, I believe.

Q. At night?

A. Yes.

[fol. 1315] Q. Did anybody come to her home at that time?

A. Yes.

Q. Outside of Norma bringing the children home and the maid coming?

A. Not that I observed.

Q. No strangers?

A. Not that I observed.

Q. Well, you stopped, you said, there, so you could observe, isn't that right?

A. That was my purpose in being there, yes.

Q. You saw Norma come to the house twice, did you not?

A. I didn't see her, no.

Q. Did you hear her come to the house twice?

A. I heard someone come into the house, yes.

Q. You could not see who it was?

A. No.

Q. Did you make any effort to see who it was?

A. I didn't want to be seen myself, and beyond what I could see from the vantage point that I had, counsel.

Q. You were there to see who would come to this house, were you not?

A. That was my intent on going there, yes.

Q. When you heard somebody come to that house why didn't you see who it was?

A. Because I did not want to be seen myself.

[fol. 1316] Q. At that time you were still looking for the blackmailers?

A. That was my purpose in going there, yes,

Q. What happened after 9:30, what did you do?

A. I went across that lot into the new construction.

Q. Across what lot?

A. Across the vacant lot adjacent to the McCauley home.

Q. Into the building that was being constructed?

A. That's right.

Q. And how long did you stay there?

A. I was out there twice, and went back across the vacant lot and was in there until Norma came home about 12:30.

Q. And you walked out of that building twice across to the vacant lot?

A. Yes.

Q. You were not afraid of being seen at that time, were you?

A. I had an anxiety about it.

Q. However, you did it so you could find a blackmailer, is that right?

A. I did it so I could look down Chalon Road, as a matter of fact.

Q. As a matter of fact, nobody came to the house during the time that you were there?

[fol. 1317] A. Not that I observed, no.

Q. You were in a position that you could observe?

A. I was in a position so I could observe what I could see.

Q. That was your purpose in being there?

A. That was my purpose for going.

Q. But along about 12:30 Norma did come home?

A. Just about, yes.

Q. You thought you saw Norma's red dress?

A. Yes.

Q. Did you see her come into the house?

A. No.

Q. And after Norma came home what did you do?

A. After about five or ten minutes afterward I stepped out of the house and started down so that I would then be about parallel with the side of the garage, which shows the kitchen, and saw her at the telephone, and then I walked back to the new construction.

Q. Now, there are no sidewalks on Somera Road?

A. No.

Q. Did you walk out in the middle of it, in the middle of the street?

A. No.

Q. How did you walk?

A. I walked right down the lawn.

Q. What lawn?

[fol. 1318] A. That you have broken ground for new construction, and then the Holt house is the next house down, and then there is a lawn right there.

Q. Is that across the street from the McCauley home?

A. Yes, and there is a driveway into the Holt house right there, too.

Q. You stayed there long enough to observe Norma on the telephone?

A. To see that she was there on the telephone, yes.

Q. Then what did you do?

A. Walked back to the new construction.

Q. How long did you remain there?

A. I would say about five or ten minutes, something like that.

Q. What time did that telephone call come in to Norma, or what time did you see her on the telephone?

A. I would say it would be about, in relation to 12:30, about twenty minutes of 1:00, something like that.

Q. Then what did you do?

A. After I had gone back to the new construction?

Q. Yes.

A. I waited about five or ten minutes; I walked out again and walked down the hill.

Q. When you walked down the hill you walked on the side of the street, did you not?

[fol. 1319] A. I walked on the side, yes.

Q. There are no sidewalks?

A. That's right.

Q. So, all in all, after Norma came home, you remained observing for about fifteen minutes, is that right?

A. Just about.

Q. And while she was away you were there for several hours?

A. That's right.

Q. Now, did you think that Norma could be disturbed while she was away from the home?

A. No.

Q. Did you believe she could be disturbed when she was home?

A. May I correct my previous answer—she could have been and I didn't feel there was anything I could do about that.

Q. Did you believe there was a greater possibility of the blackmailers coming back to her home when she was home?

A. I don't believe that I considered it just that way. I had gone to her home out of desperation more than anything else, to do something. I didn't want to just sit in my apartment with her being threatened in that manner. I wanted to do something.

[fol. 1320] Q. Norma had told you she had been threatened on the phone, is that right?

A. Yes, sir.

Q. When you saw Norma on the phone before 1:00 o'clock in the morning, did it occur to you maybe the blackmailers called her again?

A. It occurred to me.

Q. Did you ask her anything about it?

A. No, sir.

Q. What did you do?

A. Walked back to the new construction.

Q. Just let it go at that?

A. Yes, sir.

Q. And you were there for the purpose of finding blackmailers?

A. To see whomever, if anyone, came there to bother her, yes.

Q. Then you walked from there back to U. C. L. A.?

A. Yes, sir.

Q. Did you go directly to your car?

A. Yes, sir.

Q. Did you stop off any place on your way back to U. C. L. A. to get your car?

A. No, sir.

Q. Did you pass a cab stand?

A. Not that I have knowledge of.

[fol. 1321] Q. Did you stop at any men's room on the way to the car?

A. No.

Q. At a gas station?

A. No.

Q. You are sure of that?

A. Yes.

Q. You arrived at your car and drove home?

A. That is correct.

Q. When you got home you went to bed?

A. Yes.

Q. You got up at what time?

A. About 9:00 or 9:30, something like that.

Q. You showered, did you not, when you got up?

A. No.

Q. You took no shower when you got up?

A. No.

Q. You recall that?

A. I do recall it, yes.

Q. You didn't clean your fingernails when you got up?

A. No, sir.

Q. You waited there until the police came?

A. Yes.

Q. Did you tear up any papers while you were there after you got up the morning of the 5th?

[fol. 1322] A. Not that I recall.

Q. Will you think back, please. Did you tear up any papers while you were in your apartment on the morning of the 5th?

A. Not that I recall.

Q. Now, you told us—Withdraw that. On the morning of the 5th you wrote People's Exhibit No. 18, is that right?

A. Yes, on the morning of the 5th.

Q. And you started out by saying, "I, John Crooker, on Monday, July 4, 1955, attempted to communicate with Norma T. McCauley to talk with her and discern the reasons and feelings for her rejections of our close and intimate relationship of nearly two years standing."

Had you attempted to contact Norma on July 4th?

A. No, sir.

Q. This paragraph was your language, was it not?

A. Yes, sir.

Q. Gravante didn't tell you to write that, did he?

A. No, sir.

Q. In none of the conversations you had with the police, and in any of the questionings by the police or in any of the questionings which the police conducted, did they tell you that you had attempted to talk to her on the 4th?

A. No, they asked me if I did, as I recall, but that is all.

[fol. 1323] Q. Did they say anything to you about "discerning the reasons and feelings for her rejection of your close and intimate relationship"?

A. No.

Q. That was your own idea, was it not?

A. Yes.

Q. It was true, wasn't it?

A. No.

Q. She did not reject that relationship?

A. No, it had not been, no.

Q. And had that relationship existed for nearly two years?

A. Yes.

Q. Now, the police had no way of knowing that, did they?

A. No.

Q. That was your idea, was it not?

A. When I say——

Q. Just answer the question, please.

A. I would like to rephrase that answer.

Q. You want to correct an answer?

A. Yes.

Q. All right, correct it.

A. I knew at that point that the police had the envelope containing all of our correspondence, all of my poems, and [fol. 1324] so forth, and so I knew at least they would know that we did have a relationship.

Q. And when you wrote that paragraph on the early morning of July 6th you were thinking of that, were you?

A. I cannot say exactly what I was thinking about when I wrote that.

Q. Then you say:

"As exactly as I can recall, the following facts constituted a sequence of events which culminated in her death."

Now, that was your language, was it not?

A. Yes.

Q. Gravante did not suggest that to you, did he?

A. No.

Q. Then you said:

"I left my place of residence at approximately 3:00 o'clock p.m. and drove toward her residence."

That was true, was it not?

A. Yes.

Q. They did not suggest to you, did they—they did not suggest that to you, did they?

A. No.

Q. "I may have stopped for gas on the way, and arrived at the east entrance of Bel Air at approximately 4:00 o'clock."

That was true, was it not?

[fol. 1325] A. Approximately, yes.

Q. They did not suggest that to you, did they?

A. No.

Q. They didn't tell you that you arrived at the east entrance of Bel Air, did they?

A. No.

Q. And in their questioning of you did they ask you that?

A. No.

Q. That was all your own idea?

A. Yes.

Q. And it was the truth?

A. Approximately, yes.

Q. "I drove directly past her home and saw her car in the garage, and saw her two eldest children playing on a neighbor's lawn." Did they suggest that to you?

A. No.

Q. That was all your own idea?

A. Yes.

Q. In the questions that they put to you they did not say anything about your seeing her two eldest children on any lawn, did they?

A. No.

Q. It was the truth, wasn't it?

A. Yes.

[fol. 1326] Q. "Realizing the futility of continuing my attempt to talk with her at that time I drove back down past her house, by her parents' residence."

What did you mean by the statement, "Realizing the futility of continuing my attempt to talk with her at that time"?

A. I didn't mean anything.

Q. Did they tell you that your attempt to talk with her would be futile?

A. No.

Q. That is, the police, in questioning you?

A. No.

Q. Did they suggest it to you?

A. No.

Q. Did you have anything in mind when you wrote that?

A. I can't recall what I had in mind. I tried to make the document look reasonable enough so that they would leave me alone.

Q. Is that why you wrote, "Realizing the futility of continuing my attempt to talk with her at that time, I drove back down past her home, by her parents' residence."

A. That is why I wrote the whole document.

Q. I didn't ask you that. You did drive by her home, did you not?

A. Yes, sir.

[fol. 1327] Q. That was the truth?

A. Yes, sir.

Q. You drove back past her home, that was the truth, was it not?

A. Yes, sir.

Q. And then you drove by her parents' residence, that was the truth, was it not?

A. Yes.

Q. "Stopped to note some activity of bathers at their pool." You did stop to note some activity of the bathers at their pool?

A. Yes.

Q. And so far, the only part that is untrue is this phrase or clause, "Realizing the futility of continuing my attempt to talk with her at that time," that is not true, is that right?

A. That is correct. I didn't go there to see her.

Q. And that is the only portion so far that is not true?

A. Yes, approximately, yes.

Q. Had you made any attempt to talk to Norma during the month of June?

A. Yes.

Q. Had she refused to talk to you during the month of June?

A. She had made some refusals, yes.

[Vol. 1328] Q. She had a policeman waiting for you in the month of June, waiting for you when you came up there, did she not?

A. He was not waiting for me, no.

Q. He arrived after you did?

A. Yes.

Q. She did not make the call for the police while you were there?

A. No, she did not, or, at least—May I change that? I was not aware that she did.

Q. You were outside, weren't you?

A. That's right.

Q. You never got into the house?

A. No, I did not.

Q. That was one attempt you made to talk with her?

A. Yes.

Q. That was futile, was it not?

A. As it turned out, yes.

Q. "And then proceeding to a vantage point on that side of the canyon." You did proceed to a vantage point, did you not?

A. Yes.

Q. That was the truth?

A. Yes.

Q. "From there I watched until she drove down the road toward her parents' home." You saw Norma leave the [fol. 1329] house and drive toward her parents' home, did you?

A. No, as a matter of fact, I did not.

Q. Who suggested to you to put that in there?

A. No one.

Q. It was your own idea, was it not?

A. Yes.

Q. Why did you say, "From there I watched until she drove down the road toward her parents' home"?

A. I can't give you a specific reason for saying that.

Q. Originally you had written, "Drove down the road toward her mother," and then you crossed out "mother" and put in "parents' home," isn't that right?

A. I don't recall.

Q. Well, I will show it to you, Mr. Crooker, on Page 1.

A. That is correct.

Q. Did anyone suggest that you cross out "mother" and put "parents'" in there, instead of mother?

A. Not that I recall.

Q. You then said, "I then drove down to the Stone Canyon Drive entrance to Sunset."

Did you then drive to Stone Canyon Drive entrance at Sunset Boulevard?

A. That is the way I left.

Q. That is true, then, is it not?

[fol. 1330] A. Yes.

Q. Did anybody sugest that you write that?

A. No.

Q. It was your own idea?

A. Yes.

Q. And that was because it was the truth, isn't that right?

A. I presume so.

Q. "Up the west entrance again," and in all fairness I don't want to confuse you, is this word "east" or "west," Mr. Crooker, at the top word?

A. I would say it would be "west."

Q. "Up the west entrance again and past her home again." Is that the truth?

A. No, it is not, sir.

Q. You did not drive up past her home again?

A. No.

Q. Who told you to put that in there?

A. No one.

Q. Whose idea was it to include that?

A. No one told me, I just wrote it.

Q. "I then drove to the U. C. L. A. parking area," that is true, is it not?

A. Yes.

Q. Nobody told you to write that?

A. No.

[fol. 1331] Q. Your own idea?

A. Yes.

Q. "And called a yellow cab and was driven to her residence." That is the truth, isn't it?

A. Yes.

Q. "I went around the house to the rear and entered by the door to the children's room." Did anybody suggest that to you?

A. Not that I recall, no.

[fol. 1332] Q. In the questioning by the police, did they tell you you entered the children's room?

A. No.

Q. Were there any questions directed to you about the children's room?

A. Not that I recall.

Q. Whose idea was this about saying "I went around the house to the rear and entered by the door at the children's room"?

A. It was my language, my words.

Q. "Then I waited until she returned with the children in the early evening hours." Did the police know you waited there until she returned with the children in the early evening hours?

A. No.

Q. When they questioned you, did they suggest that to you?

A. No.

Q. When you wrote that, you wrote it of your own volition, did you not?

A. Yes.

Mr. Armstrong: Pardon me just a moment, Mr. Alexander. Isn't that a wrong word there? I am sorry. I misread it when I read it myself the other day.

By Mr. Alexander:

Q. "I hid in a closet in the children's room, waiting until [fol. 1333] they were asleep." In the questioning by the police, did they suggest to you that you hid in that children's closet?

A. No.

Q. Did they ever suggest to you that that is where you hid?

A. No.

Q. As a matter of fact, the first time that you saw that closet—withdraw that.

In any event, you wrote that of your own volition?

A. Yes.

Q. "Norma came home about 12:00 or 1:00 o'clock a.m." Did the police tell you that Norma came home about 12:00 or 1:00 o'clock a.m.?

A. No.

Q. It was the truth, was it not? She did come home about 12:00 or 1:00 o'clock, between 12:00 or 1:00 o'clock, anyway?

A. Yes.

Q. And when you wrote that sentence, you wrote that of your own volition, did you not?

A. Yes.

Q. "She was followed home by some other car." That was the truth, wasn't it?

A. As a matter of fact, yes.

Q. When the police questioned you, did they suggest to you that she was followed home by another car?

[fol. 1334] A. No.

Q. That you wrote of your own volition?

A. Yes.

Q. "The other car's occupants waited until she closed

her garage door and went around opening her front door, and then drove away." Did the police suggest that paragraph to you, or that sentence?

A. No.

Q. In their questioning of you, did they tell you that that had occurred?

A. No.

Q. That was your own idea?

A. Yes.

Q. And you wrote that of your own volition?

A. I didn't write any of the document of my own volition.

Q. That particular sentence was your own idea, though, was it not?

A. Yes.

Q. "I waited in the children's room until she was in her own bedroom. Then I opened her door, which was ajar."

In the questioning by the police, did they tell you that you waited in the closet until she was in her own bedroom?

A. No.

[fol. 1335] Q. Did they tell you that you opened the door while it was ajar?

A. No.

Q. You wrote that, yourself?

A. Yes.

Q. Nobody suggested that to you, did they?

A. No.

Q. "Norma was stunned to see me, but she remained remarkable calm and self contained." Did the police suggest to you that Norma remained remarkable calm and self-contained?

A. No.

Q. In their questioning of you, did they ask you anything about whether she was remarkable calm and self-contained?

A. Not that I recall, no.

Q. And nobody suggested anything like that to you, did they?

A. Not that I recall.

Q. "I, on the other hand, was extremely nervous and generally unable to make myself realize that I was there in her room and had taken the measures described to see her."

Did anybody suggest to you any part of that entire paragraph?

A. No, not that I recall.

Q. In the questioning by the police, was there any ques-
[fol. 1336] tions directed to you along that line?

A. Not that I recall.

Q. And when you wrote that paragraph, you wrote that of your own volition?

A. I didn't write any of the document of my own volition.

Q. That paragraph, though, was your own creation, was it not?

A. Yes.

Q. "We talked for hour on hour. Norma had been out, had had some cocktails, and felt sleepy."

Had the police told you that Norma had had cocktails on the night of July 4th?

A. No.

Q. Had the police told you that you and Norma talked for hour on hour?

A. No.

Q. Had they told you that she felt sleepy?

A. No.

Q. Were there any questions directed to you along those lines at all?

A. Not that I recall.

Q. This was your own thought and your own language, was it not?

A. Yes.

Q. "I tried again, as I had tried many, many times before
[fol. 1337] by telephone and by letter to get her to tell me her reasons and feelings for leaving me."

Had the police told you that you had tried many, many times before by telephone and by letter to get her to tell you the reasons and feelings for leaving you?

A. I believe that they had asked some questions about the—whether or not we had quarreled—whether or not there had been a break-up in my acquaintanceship with her. This is about as near as they came to that.

Q. Had you told them that you had tried many, many

times before by telephone and by letter to get her to tell you the reasons and feelings for leaving you? Had you told the police that?

A. No.

Q. Did they suggest that to you?

A. No.

Q. Was this the truth?

A. No.

Q. You had not tried many, many times before by telephone and by letter to get her to tell you the reasons and feelings for leaving you?

A. To answer your question, I had tried since—especially during the period of June—from about the middle of the month until I saw her on the third, to contact her, and I had unsuccessfully tried during that period of time, right there.

Q. Then you go on to say, "I told her that I could not [fol. 1338] believe that my threats were the answer."

Had the police told you that you had threatened Norma?

A. Well, their questions at the Central Station about my extorting money from her, telling we that I was extorting money from her — I don't know if they used the word "threat", but that was the context of those questions, yes.

Q. As a matter of fact, your telegram of June 18th was a threat, was it not?

A. No, sir.

Q. When you wired her, "if unable to contact you by tomorrow, will proceed without further consideration", you do not consider that a threat?

A. Well, in the context that she received—the fact of my telling her that I was going to talk with her mother, as a threat, yes, I would consider it.

Q. And when you wrote her on June 4th that "you will then write to her dad, to her mother, and to her brother, separately, that you would explain our love, that you would explain you are her husband in fact and you will describe the bond which exists between us", did you consider that a threat?

A. Yes, when that particular letter was written, I would consider it a threat then, yes.

Q. This statement of the 18th—pardon me—People's [fol. 1339] Exhibit 18 was written after this letter of June 4th, was it not?

A. The telegram was sent after the letter?

Q. No. I am talking about People's Exhibit 18.

A. Yes.

Q. "But Norma would talk about it. She started to go to sleep."

Did you mean to say there, "But Norma would talk about it," or "Norma would not talk about it?" Did you omit the word "not"?

A. I don't recall.

Q. Let me show it to you (showing same to witness).

A. (Witness examines same.)

Q. On page 3, "But Norma would talk about it. She started to go to sleep." Did you omit the word "not"?

A. I don't recall having omitted it. It appears that way.

Q. You mean to say, "Norma would not talk about it", is that right?

A. It appears that way.

Q. The police did not suggest to you that Norma started to go to sleep, did they?

A. No.

Q. "I couldn't believe it. I sat near her on the chaise lounge, smoking one cigarette after another, and every few minutes going close to her to see whether or not she was [fol. 1340] really sleeping."

Did the police suggest any part of that sentence?

A. No.

Q. "And I think she was at least dozing, and I didn't know what to do. For days I had not known what to do. I had tried threats and coercion and profession of my feelings for her. She had rebuffed all my attempts and now she was going to sleep."

Did the police tell you that?

A. No.

Q. And when you wrote, "and now she was going to sleep", you meant to convey surprise when you wrote that, or anger?

A. I don't know what I meant to convey.

Q. Well, what was your purpose in writing, "and now she was going to sleep, " and then you placed a wonder mark after the word "sleep". What did you intend to convey by that?

A. I don't have any specific recollection about it, Mr. Alexander.

Q. You placed a wonder mark after the word "sleep", did you not?

A. Not that I recall.

Q. Well, look at it (showing same to witness).

A. (Examining same.) There is one there.

Q. You, John Russell Crooker, were offended by that, [fol 1341] were you not?

A. I don't understand your question.

Q. You were offended when she went to sleep?

A. I don't know how to answer your question.

Q. "On the dresser by the door to her bedroom with a child's toy revolver and other things, I found a kitchen knife about ten inches long with a blade of about six inches."

Now, did the police suggest to you what kind of a knife you found?

A. No.

Q. Did they suggest to you that on the dresser by the door to her bedroom with a child's toy revolver and other things, you had found a kitchen knife?

A. No.

Q. In any of the questions directed to you, did they tell you that is where you found the knife?

A. No.

Q. Did they tell you the knife was about ten inches long?

A. No.

Q. Did they tell you that it had a blade of about six inches?

A. No.

Q. In any of their questions put to you, did they suggest that to you?

A. No.

Q. "I took the knife and went back to the chaise lounge.

[fol. 1432] Then I put the knife in my coat pocket and knelt beside her, for what she to be a long time."

I think you made a mistake there (showing same to witness).

A. (The witness examines same.)

Q. Directing your attention to Page 4, "For what she to be a long time. She was asleep."

What did you intend to say there?

A. From the context, it would seem that that word would be "seemed".

Q. "Seemed to be a long time"?

A. Yes.

Q. Did the police suggest to you that you put the knife in your pocket?

A. No.

Q. In any of the questions directed to you, did they tell you or ask you about putting the knife in your pocket?

A. Beyond their questions as to what——

Q. (Interrupting). You understand my question, Mr. Crooker, about this particular phrase?

A. No.

Q. "And knelt beside her for what seemed to be a long time. She was asleep."

Did the police suggest that to you?

A. No.

Q. In their questions did they ask you about that?

[fol. 1343] A. No.

Q. That was all your own idea, was it not?

A. Yes.

Q. "I took her throat in my hands and she awoke and started to scream."

Did they suggest to you that you took her throat in your hands?

A. Yes.

Q. When did they suggest that to you?

A. When they were asking me questions about strangulation and my—they were so vague about it that I didn't know how she had been strangled.

Q. You were told, were you not, by Gotch and Stambler, or didn't you tell us that Gotch and Stambler told you that she had been stabbed and strangled to death?

A. Yes.

Q. And you took from that to mean that you strangled her by hand?

A. No. As a matter of fact, there was some questions about clothing, and I really did not know what to put down there, so I put both down there.

Q. You knew, at that time, did you not, that her body was found with a portion of her clothing about her neck?

A. They did not specifically describe that to me, no.

Q. They did not tell you then that you took her throat [fol. 1344] in your hands and she awoke and started to scream. Did they tell you that?

A. No.

Q. Did they suggest that to you?

A. They suggested it to me through their questions, yes.

Q. That she started to scream?

A. No.

Q. "I heard the maid, so I reached the knife in my pocket while holding my hand over her mouth."

Did they suggest to you that you held your hand over her mouth?

A. Yes.

Q. When was that?

A. Someone had told me that my—the marks on my hands looked like bite marks to them.

Q. The marks on your left hand?

A. That's right.

Q. You are right handed, are you not?

A. That's right.

Q. "While holding my hand over her mouth. Then I hit her with the knife and pushed and pushed on it."

Did they suggest to you that you pushed and pushed on that knife?

A. No.

Q. That was your idea, was it not?

[fol. 1345] A. Yes.

Q. What did you mean when you said you pushed and pushed on the knife?

A. I didn't have any—I don't have any recollection of a specific meaning for it.

Q. You mean you just wrote, and that was it?

A. Yes.

Q. And when you told about pushing a knife into a human being, you pushed and pushed, you had no thoughts of what you were saying?

A. I had no specific recollection of a purpose for that particular phrase.

Q. You were describing how you were pushing and pushing the knife into a human being?

A. No, sir, I certainly wasn't.

Q. What were you pushing and pushing your knife into? What did you mean to convey when you wrote that?

A. I meant to convey a semblance of a confession that would make the police leave me alone.

Q. And this was your own idea of writing it that way?

A. Yes, sir.

Q. "But she still made sounds and struggled on the lounge. I choked her more with some clothing—wound clothing around her throat, and after a long time she was still and the house was still and I couldn't realize that Norma was gone."

[fol. 1346] Did the police suggest to you that she had made sounds and struggled on that lounge?

A. No.

Q. In any of their questions did they suggest that to you?

A. No.

Q. That was your idea, was it not?

A. Yes. May I correct my answer? With respect to the chaise lounge, of course she had been found—they told me she had been found on the chaise lounge. That is as much of that particular reference to the lounge that—only that point was suggested to me.

Q. My question was directed to "but she still made sounds and struggled on the lounge."

A. No.

Q. Did they suggest to you that you couldn't realize that Norma was gone?

A. No.

Q. In any of their questions at all did they suggest that to you?

A. Of course, they told me that Norma was dead, if that has any connection.

[fol. 1347] Q. "I took the knife, her car keys, and some money, and thought I must take her car and go."

Now, when the police were questioning you, did they suggest to you that you took money from any place in that house?

A. Yes, sir.

Q. Who suggested that?

A. Sgt. Gotch.

Q. When?

A. In the Central Station.

Q. At night, is that right, is that what you mean?

A. Yes.

Q. And how about her car keys? Did anybody suggest to you that you took her car keys?

A. Yes.

Q. Who?

A. I believe calling the keys car keys was also Sgt. Gotch. At least, he asked me questions about keys at the Central Station, and there were also questions in that regard at the West Los Angeles station.

Q. And that is why you wrote that particular sentence?

A. Yes.

Q. "But I walked and walked and walked."

Did the police tell you to write that?

A. No.

Q. In their questioning of you, did they suggest that you [fol. 1348] walked and walked and walked?

A. No.

Q. That was your own idea, was it not?

A. Yes.

Q. That was true, was it not?

A. I beg your pardon?

Q. That was true, was it not?

A. That was true that I—on the 5th, I walked back to U.C.L.A., yes.

Q. "The dawn was coming when I reached my car, got in, drove home, took off my clothes and threw them into the incinerator."

Whose idea was it—— Strike that. Who suggested to you that you drove home, took your clothes off and threw them into the incinerator?

A. No one.

Q. That was your own idea, wasn't it?

A. Yes.

Q. In any of the questions by the police, did they even mention incinerator?

A. No.

Q. "I went to bed and must have——"

A. (Interrupting) May I correct that answer? It is possible that they asked me, while they were in my apartment, where the incinerator was, but I don't have any specific recollection to the question, so my answer of No will stand. [fol. 1349] Q. "I went to bed and must have slept some because shortly before noon I couldn't slept any more——" I take it you meant to say "couldn't sleep any more"?

A. From the context I would say so.

Q. "I just waited for time to run out."

What did you mean by that?

A. I have no specific recollection of what I meant in saying that.

Q. You have no specific recollection of writing, "I just waited for time to run out"?

A. I don't have any specific recollection of having written those words, no.

Q. Would you care to see them, Mr. Crooker?

A. I presume I have read them. I say, I don't have a specific recollection of those particular words.

Q. Well, look at it again. Maybe that will refresh your recollection, "I just waited for time to run out." (Showing same to witness.)

A. (Examining same) It is written there, and in the same hand.

Mr. Alexander: Does your Honor wish me to continue? I have a little while to go yet.

The Court: We will adjourn for the day, ladies and gentlemen. Do not discuss the case among yourselves nor talk to anyone about it, nor allow anyone to talk to you [fol. 1350]* about it. Do not form nor express any opinions or conclusions about the case until the matter is finally submitted to you.

We will take up again at 11:00 o'clock Monday morning, 11:00 o'clock Monday morning.

(Whereupon at 4:30 o'clock p.m. this day a recess was taken until Monday, December 5, 1955, at 11:00 o'clock a.m.)

[fol. 1350a] In the Superior Court of the State of California in and for the County of Los Angeles

Santa Monica Dept. B Hon. Stanley Mosk, Judge

[Title Omitted]

Transcript of Proceedings—December 5, 1955

[fol. 1351] The Court: The jury is present. Take the stand, Mr. Crooker.

John Russell Crooker, Jr., called as a witness in his own behalf, having been previously sworn, resumed the stand and testified further as follows:

The Court: Continue your examination, Mr. Alexander.

Mr. Alexander: Yes, your Honor.

Cross-examination (Continued).

By Mr. Alexander:

Q. Now, Mr. Crooker, we had proceeded to the point on Friday where on Page 4 of People's Exhibit 18 we had completed "I just waited for time to run out," and you told us that was your own language, and can you tell us now what you meant by that?

A. I don't have any specific recollection about it, no.

Q. Then you say, "Somewhere along the way I must have thrown out her keys and the knife because I didn't have them in the things I threw in the incinerator."

Did someone suggest that to you?

A. Yes.

[fol. 1352] Q. Who suggested that to you?

A. Officer Gravante.

Q. And when did he suggest that to you?

A. After he had read the page previous to that.

Q. On Page 4, and did he dictate those two sentences to you?

A. No.

Q. You just wrote them?

A. Yes.

Q. And that was your own choice of language?

A. Yes.

Q. Then the next paragraph, "I took some money from her purse and her keys to her car and the knife with me."

Did anybody suggest that to you?

A. Yes.

Q. When was that?

A. Between the time that he had spoken and while I was writing the first paragraph and the writing of the second paragraph.

Q. Did he dictate that paragraph to you?

A. No.

Q. That was your own choice of language, is that right?

A. Yes.

Q. On Thursday of last week, Mr. Crooker, you told us [fol. 1353] when she advanced you money for your car, you gave her a promissory note that she tore up, and on Friday on cross examination, you told us she told you she tore it up.

I have here an instrument, if the Court please. May this be marked People's next in order?

The Court: People's 38 for identification.

By Mr. Alexander:

Q. I show you an instrument dated June 1, 1954, and ask you, is this the instrument you referred to when you told

us she tore it up, and on Friday told us she told you she tore it up (showing same to witness)?

A. (Examining same) No.

Q. There is another instrument besides People's 38?

A. Mr. Alexander——

Q. (Interrupting) Just answer the question, please. Is there another written instrument besides People's 38?

A. I don't know.

Q. Do you recall writing more than the one evidence of debt for the sum of $450 and handing it to Norma McCauley, of course?

A. I have never written more than one, no, not to my recollection.

Q. Do you recall the occasion on which you wrote this one, dated June 1, 1954, in which you admit receipt for $450 from Mrs. McCauley as a personal loan?

[fol. 1354] A. To answer your question—May I say that I recognize in general the language of what I have said here. I recognize in general the amount, however, the amount—when I did write this note for $400, and the date which is at the top is out of line inasmuch as it is 1954, which wasn't the time that that loan was made to me.

Q. Let me see. In June, 1954, were you working at the California Bank?

A. No.

Q. Did you work at the California Bank?

A. Yes.

Q. When?

A. Until August of 1953.

[fol. 1355] Q. Do you recognize People's Exhibit Number 38 at all?

A. As I say, this language right here, it seems familiar to me, yes.

Q. How about the signature, John Crooker, Jr., is that your signature?

A. That appears to be my signature, yes.

Q. Other than that, you have no recollection of typing this note, is that right, or this evidence of debt, whatever you want to call it?

A. As I say, this language appears to be the language which I used when she loaned me $400.00 in July of 1954.

Q. Would that be in addition to the $450.00 set forth in People's Exhibit Number 38?

A. No, sir, she at no time loaned me an amount of money of that nature, other than the $400.00.

Q. Can you tell us the circumstances under which you gave that to Mrs. McCauley?

A. When she loaned me $400.00 in July of 1954, I wrote a note to her something in this substance, yes.

Q. My question was, can you tell us the circumstances under which you gave Mrs. McCauley People's Exhibit Number 38, which is the paper before you?

A. Again, in July, 1954, Mrs. McCauley——

The Court: Just a moment. Will you read the question, [fol. 1356] please?

(Question read.)

A. May I assume, in answering your question, that this is the paper I gave her?

By Mr. Alexander:

Q. Do you recognize it as the paper you gave her?

A. The date of this throws it all off.

Q. Forget the date; do you recognize that as a paper you gave her?

A. It could be.

Q. Do you recognize it as such?

A. I recognize this language, Mr. Alexander.

Q. All right, under what circumstances did you give that to her?

A. In July of 1954 when she loaned me $400.00 to purchase my car, I gave her such a note.

Q. A note identical in language as People's Exhibit Number 38?

A. I don't know the exact language. It appears to be this type of language, though, yes.

Q. You do not recognize People's Exhibit Number 38 as evidence of debt that you had given to Mrs. McCauley for the purchase of your automobile, is that right?

A. I do not recognize it, did you say? With some exceptions this could be the note.

Q. Can you think of another note you gave Mrs. [fol. 1357] McCauley for $400.00?

A. No, sir, it could only be one note.

Q. And that would be People's Exhibit Number 38, would it not?

A. With some exceptions, the date, sir.

Q. You don't recognize the date?

A. The date would be entirely wrong.

(To Court) May I change my last answer?

The Court: You may.

A. To the best of my recollection, my car was purchased in July. I could check that. Consequently, if it were June, of course, that would be about right.

Q. How about the amount, $450.00 set forth in People's Exhibit Number 38?

A. The amount, I would say, would be wrong.

Q. You received only $400.00, is that right?

A. Yes.

Q. But you typed the note that you gave Mrs. McCauley?

A. As I recall.

Q. And you signed the note?

A. As I recall.

[fol. 1358] Q. Now, Mr. Crooker, you told us it was not until you were in the crime laboratory on the night of July 6, 1955, that any questions were put to you concerning the murder of Mrs. McCauley, that is correct, is it not?

A. Until July 6th?

Q. Yes, you were picked up in your apartment——

A. This would be the 5th.

Q. July the 5th, I beg your pardon, the night of July 5th, yes, you are right.

A. Yes.

Q. And that was after you had been in the polygraph room?

A. Sir, I am not following you. Would you please put the last question: I did not answer it, I don't think.

The Court: Read the last question.

(Whereupon the reporter read the question as follows:

"Q. July the 5th, I beg your pardon, the night of July 5th, yes, you are right.")

The Court: Read the preceding question.

(Whereupon the reporter read the question as follows:

"Q. Now, Mr. Crooker, you told us it was not until you were at the crime laboratory on the night of July 6th"——

The Reporter: Which has been corrected to the night of July 5th.

Mr. Alexander: It will be better and shorter if I reframe [fol. 1359] the question.

The Court: Very well.

By Mr. Alexander:

Q. It was not until the night of July 5th of 1955 at the crime laboratory that any questions were put to you concerning the murder of Norma McCauley, is that correct?

A. That is correct.

Q. That occurred after you had been in the polygraph room, is that correct?

A. No, sir.

Q. Did it occur after you had been in that photographic room you call Studio A, I think?

A. Yes, sir.

Q. You had left that room and gone to the polygraph room?

A. Yes.

Q. And that was when Officer Stambler and Officer Gotch both told you you had stabbed and strangled Norma McCauley, is that right?

A. Yes, sir.

Q. And that was the first indication that you had that Norma McCauley was dead?

A. Yes, sir.

Q. Now, at the apartment, when Officer Gotch and Stambler got there in the afternoon of that day, July 5th, you told us that Officer Gotch asked you how you received the [fol. 1360] injuries to your hand.

A. Yes, sir.

Q. And at that time you told them you received that in

disentangling some bumpers out toward the beach, is that right?

A. Yes, sir.

Q. And Mr. Armstrong asked you whether that was the truth, and you said No, and you told us you gave that reason for the injuries to your hand because you did not want to disclose your relations with Norma McCauley, is that correct?

A. To answer the truth to those questions which were posed to me in my apartment would involve things which I did not wish to discuss without talking to an attorney first.

Q. At that time you had no indication that Norma McCauley was dead, had you?

A. I had indication that the police were concerned with Norma McCauley because they had pointed out her picture and asked me who that was and because they went out to my car and brought back the envelope containing letters and poems and other things—had those indications plus the indication of Sgt. Gotch talking on the phone with someone and mentioning a man who worked with Sanitop, which I recognized as the place where Frank McCauley worked.

Q. At that time did you have any indication that Norma [fol. 1361] McCauley was dead?

A. No, sir.

Q. Did you have any indication that you were being accused of her murder?

A. No, sir.

[fol. 1362] Mr. Alexander: I have here another instrument, if the Court please. May that be marked People's Exhibit 39?

The Court: People's 39 for identification.

Mr. Alexander: May the record show that People's 39 is part of Exhibit K that was—it is part of People's K which has heretofore been marked by the defense.

Mr. Armstrong: Defendant's Exhibit K.

The Court: The record shows that it has been removed from Defendant's Exhibit K. We will mark it People's Exhibit 39 for identification.

By Mr. Alexander:

Q. I show you a piece of paper, People's Exhibit 39, and ask you, do you recognize the handwriting on that? (Showing same to witness.)

A. (Examining same.) Yes, sir.

Q. Is that your handwriting?

A. Yes, sir.

Q. And is that your signature, "J. R. Crooker"?

A. Yes, sir.

Q. And did you write that on the date it purports to be, June 26, 1955?

A. I don't recall the exact date, but I presume that is correct.

Q. Now at the time you were arrested and the police were in your apartment, People's Exhibit 39 was in a basket or receptacle of some kind in a torn condition, was it not?

A. I wouldn't be able to answer that. I mean, I don't [fol. 1363] know.

Q. Do you remember tearing People's 39?

A. No. In fact, I thought that this was not torn, but I could have torn it.

Q. You recognize that as an instrument having come from your apartment, is that correct?

A. I don't know where it came from, for example, into the police possession, but at least I recognize that it was in my apartment at one time.

Q. Well, after you wrote that, where did you keep People's Exhibit 39?

A. Well, it was in my apartment.

Q. And it was in your apartment when the police arrived, was it not?

A. I don't know.

Mr. Alexander: May this be marked in evidence, if the Court please?

The Court: People's 39 in evidence.

By Mr. Alexander:

Q. Now I will read this to you, Mr. Crooker. (Reading:) "Notice of claim of right, title, and interest to all properties contained in my apartment, except those reserved to my landlord is herein given to all persons whomsoever.

Notice is also given that any entry other than by my landlord or any search, seizure, or any taking or any other [fol. 1364] assertion or exercising of dominion and control of properties within this apartment, other than an exercise of right or title by my landlord, shall be deemed——" is that word "trespatory"? (Showing same to witness.)

A. (Examining same) That is what it appears to be, yes.

Q. "—and shall immediately be prosecuted to the full extent of the law."

Did you write that on or about the date it bears, June 26, 1955?

A. Again, I am not sure of the date, but I would presume so, yes.

Q. And at the time you wrote that, were you giving notice to burglars that they were to take nothing from your apartment?

A. In a sense, yes.

Q. And you were thinking of burglars when you warned them to take nothing from your apartment, is that right?

A. Not burglars, per se. Norma and I had talked about the danger of having the things in my apartment that were in my apartment, and I tried to relieve her anxiety in that respect, and had talked with her about it, and I put that up in my apartment.

Q. Now, you had studied criminal law, had you not?

A. I have.

[fol. 1365] Q. You studied at Southwestern and at U.C.L.A., too, had you not?

A. Yes.

Q. And in your study of criminal law, had you been told that searches and seizures or the illegality of searches and seizures referred to police authorities only and not to private parties?

A. In my study of criminal law, we did very, very little work on such matters.

Q. Now, to whom were you giving notice here that "any exercise of right or title other than by my landlord shall be deemed trespatory and shall immediately be prosecuted to the full extent of the law"?

To whom were you giving that notice?

A. To no one in particular.

Q. You had expected someone wanted the notes that you had offered in evidence as part of People's Exhibit I, isn't that correct?

A. As I say, Norma and I had discussed it.

Q. Norma wanted them back, did she not?

A. She never did mention that to me.

Q. Not to you?

A. No.

Q. Did you suspect she wanted them back?

A. No.

Q. Did you fear somebody like a private detective or [fol. 1366] someone else might break into your apartment and remove those notes?

A. I think that was her fear.

Q. And not yours?

A. No, I didn't feel—I thought that she was worrying unnecessarily.

Q. Is that why you kept the notes in the glove compartment of your car?

A. Yes, sir.

Q. Where did you leave People's Exhibit Number 39 after you wrote it?

A. It was in my desk after a day or so.

Q. And then what did you do with it?

A. Just left is there.

Q. And you have no recollection of tearing it up?

A. No, I don't.

Q. Now on July 5th you returned home and that morning you called your wife, is that right?

A. July 5th?

Q. Yes.

A. Yes.

Q. When had you called your wife previous to that morning?

A. I don't recall.

Q. It was at least five weeks before that, was it not?

[fol. 1367] A. I wouldn't say that it would be that long. I just don't recall. May I change my answer, please?

The Court: Yes.

A. I would say that it would be not that length of time. In fact, I had arranged with her for calls to be made con-

cerning employment, and I am sure that I called her through the previous week, if I recall correctly.

[fol. 1368] Q. Now, directing your attention to People's Exhibit 1, do you recognize that white shawl as a shawl that Norma at one time owned (showing same to witness)?

A. (Examining same) No, I don't recognize it.

Q. Had you ever seen that People's Exhibit 1 before?

A. Not to my knowledge.

Q. And when you say you thought you saw Norma's red dress on the night of July 3rd, did you think you saw People's Exhibit 1, too?

A. I have no recollection of that, no, sir.

Q. Now, on the 6th of June, you called Mrs. Thompson, did you not? That is, Norma McCauley's mother?

A. Again, I have no specific recollection of that date.

Q. Do you recall calling her along the first week in June?

A. I did call her.

Q. That wasn't a common occurrence, your phoning Mrs. Thompson, was it?

A. Not a common occurrence, no.

Q. And you asked to see Mrs. Thompson, did you not?

A. When I did call her, I asked to see her, yes.

Q. And Mrs. Thompson asked you to tell her what it was about over the phone, did she not?

A. She wanted to know what it was about, yes.

Q. And she told you that she had to leave, that she was [fol. 1369] going away for a period of two or three weeks, did she not?

A. She did tell me that.

Q. And then did you not say, "If you are going to be gone for two or three weeks, it might be too late"?

A. No, sir.

Q. Neither in substance nor effect, is that correct?

A. No, I recall—I feel almost verbatim what that conversation was. I could repeat it to you.

Q. And that wasn't the language of your conversation?

A. Not by any stretch of the imagination.

Q. Now, then, you were brought to the office of the District Attorney, were you not, on the afternoon of the 6th?

A. Yes.

Q. And as part and parcel of the conversation that you

had with Mr. Roll and the other persons present, were you asked these questions? Page 819, Mr. Armstrong:

"Q. Just tell the circumstances about how you went to work there and if you didn't go to work there, what occurred.

"A. When I graduated from college I wanted to go to law school, the possibility of living with families out in the area of U.C.L.A. was explained to me. I got some recommendation from the U. C. L. A. I retract the words 'recommendations,' some referrals, and also some from public advertise-[fol. 1370] ments, I think the McCauleys were from U.C.L.A., and contacted them to live there in their home and do just incidental home functions, everything ranging from bartending to baby sitting."

Was that question asked and did you give that answer?

A. I recognize in general the language, I think.

Q. And at Page 822, your Honor—Was this question asked (reading):

"Q. When, before the other night, was the last time that you saw Mrs. McCauley?

"A. I can't give a date for that."

Q. Do you recall that question and that answer being given by you?

A. I don't recall it, but it is possible that it was asked and answered.

Q. (Continuing reading.)

"Q. Well, giving you the date today, the 6th, July 6th, as being Wednesday, I'll ask you this question and I'll go back to the other one. When did you see Mrs. McCauley alive?

"A. (No answer.)

"Q. When did you last see her?

"A. I saw her Tuesday, no, wait a minute, Monday.

"Q. Monday of this week?

[fol. 1371] "A. Uh-huh. (Affirmative.)

"Q. And where did you see her?

"A. Well, at her home.

"Q. And what address, again?

"A. 1100 Somera Road."

Do you recall those questions asked you in that office and your giving those answers?

A. Just generally, yes.
Q. And then the question:
"Q. About what time did you go there?
"A. I was there twice.
"Q. When was the first time?
"A. It was early afternoon.
"Q. Did you see her on that occasion?
"A. No, no, I didn't see her.
"Q. Was anyone home on that occasion?
"A. Well, yes, the car was in the garage and the children were playing up the street."

Do you remember those questions asked and those answers being given?

A. May I say that my recollection of that type of information was my reiteration of my written statement.

Mr. Alexander: I will ask that that answer be stricken, and I will ask your Honor to instruct the jury to disregard it.

The Court: That is stricken. Answer the question, please.
[fol. 1372] The Witness: I don't recall it in that way, no.

By Mr. Alexander:

Q. Or in substance or effect?
A. Just generally, yes, the subject matter.
Q. (Continuing reading:)
"Q. Did you stop at the house?
"A. No.
"Q. Were you in an automobile or on foot?
"A. In my car.
"Q. What kind of a car?
"A. '51 Plymouth.
"Q. Color?
"A. Blue.
"Q. Remember the plates, the license plates?
"A. You mean what were the numbers?
"Q. Yeah.
"A. I don't know."

Were those questions asked and those answers given by you?

A. I don't recall it, but it is possible.

Q. (Continuing reading:)

"Q. California plates?

"A. Yes.

"Q. And about what time would you say in the afternoon on last Tuesday was it?

"A. Well, I left the house about 2:30, 3:00 o'clock. It [fol. 1373] takes approximately half, three-quarters of an hour to drive up there, I should say about 4:00 o'clock.

"Q. Did you make any stop at all or just go by the house?

"A. Just went by."

Do you remember those questions being asked of you and your giving those answers?

A. Just generally, yes.

Q. Well, had you left your house about 2:30 or 3:00 o'clock.

A. Yes, sir.

Q. And that was the truth, was it not?

A. Yes, sir.

Q. And you drove by there about 4:00 o'clock, did you not?

A. Just about, yes.

Q. That is the truth, isn't it?

A. Yes.

Q. (Continuing reading:)

"Q. You say you observed her car around the house?

"A. Uh-huh (affirmative).

"Q. What kind of a car was her automobile?

"A. Blue Packard, excuse me, Cadillac.

"Q. Where was it?

[fol. 1374] "A. In the garage.

"Q. Was it the type of garage where the garage door was open where you could see, or——

"A. Yes, open.

"Q. Did anyone, to your knowledge, see you up there around the household? Children or the maid, or anything?

"A. Not to my knowledge."

Were those questions asked and did you give those answers?

A. Just generally, yes.

Q. (Continuing reading:)

"Q. All right, now, about what time did you return?

"A. Well, it was about 6:00 o'clock or 6:30, something like that.

"Q. Same evening or in the morning?

"A. Same day.

"Q. Still daylight?

"A. Yes.

"Q. All right, tell us what happened when you returned.

"A. Well, I went around to the back of the house and went in the back door of the children's room and waited for Mrs. McCauley to come home."

Were those questions asked and did you give those [fol. 1375] answers?

A. I don't recall it in the question and answer form, but I recall that being said, yes.

Q. Do you recall that answer being given by you?

A. Just generally, yes.

[fol. 1376] Q. (Continue reading)

"Q. Did the children see you, or not?

"A. No.

"Q. How did you effect entrance into the house?

"A. Through the door.

"Q. Was the door opened?

"A. Wasn't opened.

"Q. Well, did you have a key to get in, or was it unlocked?

"A. I didn't have a key, no, I don't have a key.

"Q. Beg pardon?

"A. I don't have a key.

"Q. I take it, then the door was unlocked. You tried it and went in?

"A. It was unlocked."

Do you remember those questions being asked and those answers being given by you?

A. Just generally.

Q. And that was in the office of Mr. Roll, was it not?

A. Yes.

Q. On the afternoon on the 6th of July?

A. Yes.

Q. Now, after you completed People's 18—you recognize [fol. 1377] that, do you not?

A. Yes.

Q. You were then taken back to the McCauley home in the early morning hours, is that right?

A. Yes.

Q. And that morning, in the early morning hours, you went with the police officers down the west portion of the McCauley premises and walked back, walked around to the bank up the east portion to the door marked D-1, did you?

A. Yes.

Q. At that time did you tell the officers that were present that you did not enter door D-1 on the early morning of July 5, 1955?

A. Not that I recall, no.

Q. Then you went through door D-1 with some of the officers, did you not?

A. Yes.

Q. And you pointed out this closet, F, did you not?

A. Yes.

Q. Up to that time had you told any officer that it was closet F that you had hidden in?

A. No.

Q. While you were there in that nursery, People's Exhibit Number 24 was taken, was it not—pardon me, that is not 24—yes, it is—that picture, People's Exhibit 24 was [fol. 1378] taken, was it not?

A. Not to my knowledge; if a flash bulb was used in taking this, there were no shots or pictures taken while I was in the children's room.

Q. You say no photographer took a flash bulb or a photograph of you while you were in the children's room?

A. Not to my knowledge.

Q. On the morning of July 6th, 1955?

A. Not to my knowledge.

Q. Did you see any flash bulbs go off?

A. No.

Q. Do you recognize People's Exhibit Number 24?

A. Oh, yes.

Q. You recognize the closet shown there as being Closet F, do you not?

A. I would say that it was, yes.

Q. And you recognize Lt. Armstrong standing at the door of the closet, do you not?

A. I recognize him, yes.

Q. You recognize the glass on the shelf of that closet as being People's Exhibit Number 30, do you not?

A. I think so.

Q. Did you see that glass on the morning of July 6th, 1955?

A. No.

Q. Did you look into that closet?

[fol. 1379] A. No.

Q. Did you direct the officer to that closet?

A. Sgt. Hooper, yes.

Q. But not Lt. Armstrong?

A. No.

Q. Did you see Lt. Armstrong open that closet?

A. No.

Q. Would you say he did not open that closet?

A. I wouldn't be able to say that, no.

Q. From that nursery indicated on People's Exhibit 9, where next did the police officers go?

A. Through the children's room into a little hallway and into the bedroom.

Q. The bedroom marked "bedroom" on People's Exhibit Number 9?

A. Yes.

Q. And while you were in the bedroom, did you see or hear a photographer there?

A. Yes.

Q. Did you see the flash bulbs go then?

A. Yes.

Q. Now, I direct your attention to People's Exhibit Number 27; do you recognize People's Exhibit Number 27 as a photograph that you are in?

A. Yes.

Q. And that was taken in the bedroom, was it not?

[fol. 1380] A. Yes.

Q. Was that the first picture taken that morning?

A. I don't recall—I do recall one was taken of me standing up, and I don't know the sequence of when the pictures were taken.

Q. And in that picture you are sitting on the bed there, are you not, in Norma McCauley's bedroom?

A. Yes.

Q. You are smoking?

A. Yes.

Q. And would you say this was a fair likeness of you that morning?

A. I would guess so.

Q. Now I show you People's Exhibit Number 26, do you recognize that photograph as a photograph having been taken in the bedroom on the early morning of July 6th?

A. Yes.

Q. That shows you and Sgt. Hooper, does it not?

A. Yes.

Q. Would you say that this is a fair likeness of your that morning?

A. I would say so.

Q. While you were in that bedroom you and Lt. Armstrong walked over to the dresser marked 3 feet 8 inches high in this position, did you not?

A. Yes, whether that was Lt. Armstrong or Officer Gra- [fol. 1381] vante I am not exactly sure, but at least with some officer I did walk over to that. It could have been both of them, in fact, walked over to that dresser.

Q. What was your purpose in going to that dresser with either one or both of those officers?

A. One of them asked me where the dresser was where I had said I had found the knife.

Q. And that is when you walked over to that dresser, marked on this diagram "dresser 3 feet 8" in the bedroom, is that right?

A. Yes.

Q. While you were there, People's Exhibit Number 25 was taken, was it not?

A. It could have been.

Q. Do you recognize your picture there?

A. Yes, sir; yes, I do.

Q. With Lt. Armstrong?

A. Yes, I do.

Q. Do you recognize the dresser which is marked "3 feet 8" on People's Exhibit 9?

A. Yes.

Q. And that photograph was taken while you were there, was it not?

A. I presume that it was.

Q. Then you walked into the kitchen with the police officers, did you not?

[fol. 1382] A. Yes.

Q. And then People's Exhibit Number 28 was taken, was it not?

A. I presume that it was.

Q. Do you recognize yourself in People's Exhibit Number 28?

A. Yes, sir, I do.

Q. With your hand in your back pocket, is that right?

A. That is what it looks like.

Q. Now Mr. Crooker, when you went into the bedroom in the early morning of July 6, 1955, you fully understood, did you not, that you were being accused of the murder of Norma McCauley?

A. I realized I was being accused of it, yes.

Q. When you wrote People's Exhibit Number 18, you knew then you were being accused of the murder of Norma McCauley, did you not?

A. Yes.

Q. As a student of the criminal law, you knew the penalty for murder in the first degree, did you not?

A. I have a general knowledge, yes.

Q. You knew it could be either life imprisonment or the death penalty, you knew that, did you not?

A. Yes.

Q. You knew it at that time, did you not?

A. Yes.

[fol. 1383] Q. When you walked into the bedroom of Norma McCauley the chaise lounge was still there, was it not?

A. Yes.

Q. And the blood of Norma McCauley was still on that chaise lounge, was it not?

A. There was blood on the chaise lounge.

Q. A great quantity of blood?

A. Yes.

Q. There was blood on the drapes?

A. Yes.

Q. Blood on the pillow there?

A. Yes.

Q. Blood on the chaise lounge?

A. Yes.

Q. And on the chairs?

A. Yes.

Q. And you knew that was the blood of the woman you loved, did you not?

A. I thought so, yes.

Q. Did you then cry out and say, "Men, I did not kill her; let me help you find who did kill her!"

A. No, I did not.

Q. Did you then or at any other time before you came to this court tell anybody, or tell the police about the so-called conversation on the night of July 3rd, 1955?

[fol. 1384] A. I did not tell the police that.

Q. You knew then that Norma McCauley was dead, no question about that?

A. Yes.

Q. You could not hurt her any more by what you said, could you?

A. I felt I could, yes.

Q. In what way?

A. To tell what I knew about her and about our relationship I felt would hurt her.

Q. When did those feelings change?

A. I don't follow your question.

Q. When did you change your feelings about telling your relationship with Norma McCauley?

A. From the beginning I wanted to talk with an attorney before I told that.

Q. On the morning of July 6th your feelings for Norma McCauley were such that you did not want to reveal your relationship with her, is that right?

A. I didn't want to tell the things I knew about her, no.

Q. You knew the police were searching for her killer?

A. Yes.

[fol. 1385] Q. You knew that you could suffer the death penalty if convicted of murder in the first degree?

A. If I were convicted, yes.

Q. Why did you not then tell the police officers that you would help them find the killer of Norma McCauley?

A. Because I felt that I should talk to an attorney before I told what I knew.

Q. For whose protection was that?

A. For Norma's.

Q. Since then you feel she needs no more protection, is that right?

Mr. Armstrong: I object to that as argumentative.

Mr. Alexander: Withdraw it. I will withdraw it.

Q. When you were in Norma McCauley's bedroom on the morning of July 6, 1955, with the police officers, did you not tell the police officers there that after you heard Norma come home you left the closet, F, and went to closet B and hid behind the door to closet B?

A. I believe there was some mention made of that closet door, yes.

Q. Who made that mention?

A. I believe I did.

Q. The officers did not suggest that to you, did they?

A. No.

Q. By the way, you did see an attorney on the evening [fol. 1386] of July 6, 1955, did you not?

A. Yes.

Q. And you were arraigned in court the following day?

A. I believe so, yes.

Q. There is just one more point, Mr. Crooker. Directing your attention to Exhibit No. 34, which was the note that you produced from your pocket at the request of Mr. Armstrong here on the stand, do you recognize these notes?

A. Yes.

Q. You made them while you were in jail as an aid to refresh your memory, is that right?

A. Between jail and here, the courtroom, yes.

Q. Directing your attention to the third white page, the handwriting, "And my fears of—" underlined twice, then——

Mr. Armstrong: Just a moment, pardon me, Mr. Alexander. To which the defense will renew objection to reference to these notes, and I would respectfully direct the Court's attention to the transcript, to that particular time in which the Court asked the defendant to produce a particular

colored sheet of paper, and it appears from the producing of all of the notes, that that colored piece of paper was not among those notes, and the Court asked for the yellow piece of paper, to which the defendant demurred, and it was in [fol. 1387] response to the Court's inquiry that all these notes were placed on the witness stand, and because of the fact that there had been an error by both counsel and the Court as to the particular paper asked be produced, and these notes had not been consulted or had not been out of the defendant's pocket were produced in response to the Court's request for a particular colored piece of paper?

The Court: Unfortunately, Mr. Armstrong, your recollection is faulty. The witness produced all of his notes except the yellow piece of paper, and the Court instructed him to produce the yellow piece of paper in addition to those pieces of paper that he did produce. The objection is overruled.

Mr. Alexander: How far did we get with that question, Mr. Reporter?

(Whereupon the reporter read the record, as follows: "Q. by Mr. Alexander: Directing your attention to the third white page, the handwriting, 'And my fears of—' underlined twice, then——")

By Mr. Alexander: (Continued).

Q. —underneath that appears to be an arrowhead, and underneath that arrowhead appears to be the word "police", and underneath that another arrowhead. And underneath that the word "Roll", R-o-l-l. Do you recognize that writing, Mr. Crooker?

A. Yes.

[fol. 1388] Q. That is writing that you placed on this exhibit, is it not?

A. Yes.

Q. That was to aid you in your memory, was it not?

A. No, sir.

Q. When you wrote the word "Roll", (R-o-l-l, you referred to Mr. Ernest Roll, the district attorney, did you not?

A. I presume that I did, yes.

Q. What did you intend when you wrote those words?

A. All of these notes——

Q. No, those particular words, Mr. Crooker, please.

A. About those particular words I have been trying to think what I did mean by them. All of them I have made to discuss with my attorney points. They haven't been for reference here on the stand.

Q. That is debatable. However, the record will show what it is used for, Mr. Crooker.

In any event, you needed no notes to refresh your memory that you were in fear of the police, did you?

A. No, sir.

Q. And you needed no notes to refresh your memory that you were in fear of Mr. Roll?

A. No, sir.

Q. Why did you write those words on this exhibit?

A. As I say, all of these notes I have made to discuss [fol. 1389] things with my attorney, that I felt needed discussion.

Mr. Alexander: If the Court please, I have here a telegram. May this be marked as People's Exhibit next in order for identification?

Mr. Armstrong: May I confer with the witness just a moment on that point?

(Conference between attorney and witness outside of hearing of jury.)

Mr. Alexander: Did you want to show it to him? (Referring to telegram.)

Mr. Armstrong: Yes, please.

Yes, the stipulation is agreeable.

Mr. Alexander: If the Court please, it is stipulated that People's Exhibit Number 40 is a telegram sent by this defendant to Norma T. McCauley, and that it was sent on the date and time set forth on the telegram. Is that correct, Counsel?

Mr. Armstrong: Yes, the defense will stipulate that if the representatives of the Western Union Telegram Company were called, that they would so testify, date and time and place on the telegram, in the ordinary course of business, and it was so placed on this telegram.

The Court: It will be marked People's Exhibit Number 40 in evidence.

[fol. 1390] By Mr. Alexander:

Q. Now, I direct your attention to People's Exhibit No. 40, the telegram which reads:

"Norma T. McCauley, 1100 Somera Road, West Los Angeles: Have tried to contact you. Must leave for the day. Will return late. If unable to contact you by tomorrow will proceed without further consideration. John Crooker."

Do you now recognize this as a telegram you sent to Norma McCauley?

A. Yes, I recognize it.

Q. Was that sent on the date it bears, June 18, 1955?

A. I presume so.

Q. Was that sent at 12:26 p.m. of that day?

A. Yes, I would presume so, yes.

Q. Now, I will ask you, does that refresh your memory as to whether or not this telegram, People's Exhibit No. 40, was sent by you after the incident of the police officer on June 18th of 1955?

A. That doesn't refresh my memory on that point, no.

Q. What is your memory on that point now?

A. That I do not recall the date when I was at 1100 Somera Road and a policeman came there; I don't recall that date.

Q. Other than it being in the month of June?

[fol. 1391] A. Yes.

Mr. Alexander: I have nothing further at this time, your Honor.

The Court: This will be an opportune time for the noon recess.

Ladies and gentlemen, do not discuss the case among yourselves nor talk to anyone about it, nor allow anyone to talk to you about it. Do not form nor express any opinions or conclusions about the case until the matter is finally submitted to you.

We will take up again at 2:00 o'clock.

(Whereupon a recess was had until 2:00 o'clock p.m. of the same day.)

[fol. 1392] Santa Monica, California

Monday, December 5, 1955

2:00 P.M.

Mr. Armstrong: Your Honor, counsel and I stipulate——

The Court: (Interrupting) First, let the record show the jury is now present.

Mr. Armstrong: Counsel and I stipulate that another witness who is here, that will take a very brief time, and whose children will be coming home from school, may testify at this point. We may interrupt the other testimony for that purpose.

The Court: Very well.

Mr. Armstrong: The defense will call Mrs. Marilyn Low.

Marilyn Low, called as a witness on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

The Clerk: Be seated, please, and state your name.

The Witness: Marilyn Low.

The Clerk: Will you spell your first name?

The Witness: M-a-r-i-l-y-n.

The Clerk: And the last name?

The Witness: L-o-w.

[fol. 1393] Direct examination.

By Mr. Armstrong:

Q. Mrs. Low, where do you live?

A. 981 Somera Road.

Q. And approximately how far is that from 1100 Somera Road?

A. About half a mile.

Q. And were you acquainted with the decedent, Norma McCauley, during her lifetime?

A. Yes, I was.

Q. May I caution you, keep your voice up a little bit so that the fartherest juror may hear you as well as the rest of us?

And how long had you known Norma McCauley prior to her death?

A. Five or six years.

Q. What was the occasion of your first coming to know Mrs. McCauley?

A. When she first moved into the house on our street, I called on her to welcome her as a new neighbor.

Q. From that point forward, you knew her as a neighbor?

A. That's right.

Q. Then, from that time forward that you first met her as a neighbor, can you tell us a little of what your relationship was with Norma McCauley?

[fol. 1394] Mr. Alexander: That is calling for a conclusion, if the Court please.

Mr. Armstrong: I will rephrase the question.

Q. Can you tell us how often you had occasion to see Norma McCauley from this period of five or six years ago up until the time of her death?

A. I saw her almost daily.

Q. And in addition to seeing her almost daily, did you have telephone conversations with her?

A. Yes.

Q. And could you tell us about how frequently your telephone conversations were?

A. Two or three times a day.

Q. And during Mrs. McCauley's lifetime, did you have occasion to become acquainted with the defendant John Crooker?

A. Yes.

Q. Did you know him at the time he was employed by Mrs. McCauley?

A. Yes.

Q. And did you continue to know John Crooker at the time he was employed by the Thompsons?

A. Yes.

Q. You do know the Thompsons, Mrs. McCauley's parents?

A. Yes.

[fol. 1395] Q. And as far as you knew, at any time prior to Mrs. McCauley's death, were you aware of any relation-

ship between the defendant John Crooker and Mrs. McCauley, other than an employer-employee relationship?

A. No, not at all.

Q. And you told us that you talked to Norma McCauley on the telephone on an average—can I assume from your answer of two or three times a day?

A. That is correct.

Q. And in addition to this you told us that you saw her almost daily?

A. I did.

Q. In the visits you paid to one another, when you saw each other, and in the telephone conversations, did Mrs. McCauley frequently relate to you her activities of the preceding evening?

A. Yes.

Q. And in the—without saying anything specific that was said—did she ever, in telling you where she had been and what she had done the preceding evening, ever mention having been out on a date, to use the phrase, with the defendant, John Crooker?

A. No, never.

Q. Now, directing your attention to a time within the month or so prior to Mrs. McCauley's death, did you and Mrs. McCauley have any sort of an arrangement or signal [fol. 1396] that was in any way unusual?

A. Yes.

Q. And could you describe for us, please, what that was?

A. We had an arrangement that if either of us were frightened or for any reason, late at night, we could telephone each other and could break an engagement or some such type of nondescript message that would have no real meaning for the other one and yet if someone was listening to the conversation it wouldn't mean anything to them. They wouldn't realize the significance of it, and the other one would call the police.

Q. In other words, the arrangement was that if you received a message from Norma McCauley to the effect that "I won't be able to keep my luncheon appointment with you at 12:00 o'clock," or something like that, that would be your signal to immediately call the police, is that what you are telling us?

A. That's right.

Q. And directing your attention to the early morning hours of July 5th of this year, were you home at that time?

A. Yes.

Q. And did you receive any such telephone call from Mrs. McCauley?

A. No.

Mr. Armstrong: You may cross examine.

[fol. 1397] Cross-examination.

By Mr. McCurdy:

Q. Mrs. Low, when was it that this telephone arrangement that you had with Norma was understood or arrived at between the two of you?

A. Within the month or two before July 4th.

Q. That is before her death of July 5th?

A. Yes, sir.

Mr. McCurdy: No further questions. That is all, Mrs. Low. Thank you.

Mr. Armstrong: Thank you. May this witness be excused?

The Court: Yes, you may be excused.

(Witness excused.)

Mr. Armstrong: There is one other matter just of a momentary nature, and I have a witness in response to a subpoena duces tecum, and I understand he has a document. May I just for a moment call this witness, and then we will resume with the defendant?

The Court: If there is no objection, you may.

Mr. Alexander: I have no objection.

Mr. Armstrong: Will the representative of the Beverly Wilshire Florists please take the stand?

[fol. 1398] EUGENE HERNDON, called as a witness by and on behalf of the defendant, after being duly sworn, was examined and testified as follows:

The Clerk: Be seated and state your name, please.
The Witness: Eugene Herndon.

Direct examination.

By Mr. Armstrong:

Q. By whom are you employed?
A. By the Alexander Beverly Wilshire Florist.
Q. What is your position there?
A. Bookkeeper and florist.
Q. Are you here in response to a subpoena duces tecum?
A. Yes.
Q. To produce records with reference to John Crooker?
A. Yes.
Q. Do you have those records with you?
A. Yes.
Q. I have here what appears to be an invoice from the Beverly-Wilshire Florist, and with the Court's permission I will ask that this be marked Defendant's Exhibit next in order for identification.

The Court: Defendant's Exhibit N for identification.

By Mr. Armstrong:

Q. I will ask you to examine this invoice and ask you if you recognize it?
[fol. 1399] A. This is my own invoice.
Q. Can you tell us—this invoice, seems to bear the date December 22, 1955; can you tell us, describe what this invoice represents to you.
A. This invoice——

Mr. Alexander: To which we object as incompetent, irrelevant, and immaterial.
The Court: Objection sustained.
Mr. Armstrong: I beg your pardon, beg the Court's pardon, is the objection to the form or substance?
The Court: You asked him what the invoice means to him. That is immaterial.

By Mr. Armstrong:

Q. Directing your attention here to the date, July 22, 1955, and ask you if that was the date on which this entry was made by you.

A. This entry was made June 26th, 1955.

Q. The entry was made June 26th?

A. I mean June 22nd, 1955, this is the date. You said July 22nd.

Q. I'm sorry. June 22, 1955, and are you able from examining your invoice to tell us by whom this order was placed?

Mr. Alexander: To which we object as immaterial; does not tend to prove or disprove any issue in this case.

The Court: Objection overruled.

A. The flowers were ordered by Mr. John Crooker, Jr., [fol. 1460] whose address is 5128 Marathon Street. It was requested that no card go with it, so no name was placed on the order whatsoever, just the flowers were sent out.

Q. Does the invoice indicate to whom the flowers were sent?

A. Yes, that is who they went to.

Q. What does it say?

A. Mrs. T. McCauley, 1100 Somers Road, Bel-Air.

Q. 1100 Somera Road?

A. Yes.

Q. I ask you if this name appears to be McCauley?

A. M-c-C-a-u-l-e-y is the name.

Mr. Armstrong: I will ask that this invoice be received as Defendant's Exhibit N in evidence.

The Court: Defendant's Exhibit N in evidence.

The Witness: Do you want to keep it?

Mr. Armstrong: Yes.

The Witness: I have to have it back for my income tax records.

Mr. Armstrong: May we stipulate that a photostat be substituted?

Mr. Alexander: Yes.

Mr. Armstrong: And that the original will be withdrawn.

Mr. Alexander: Yes.

The Court: All right.

Mr. Armstrong: You may cross examine.

[fol. 1401] Mr. McCurdy: No questions.

(Witness excused.)

Mr. Armstrong: Mr. Crooker, will you resume the stand?

JOHN RUSSELL CROOKER, JR., resumed the witness stand and testified further as follows:

The Witness: John Crooker.

The Court: You may take the witness on redirect examination.

Re-direct examination.

By Mr. Armstrong:

Q. John, you told us on cross examination the relationship that you had had with Norma McCauley continued down to her death, as far as you were concerned, is that right?

A. Yes.

Q. And you also told us of the fact that on a date in the vicinity of the 30th of May that you and she had had a quarrel, is that correct?

A. Yes, approximately.

Q. And you further testified that this quarrel did not in any way change your feelings toward Norma McCauley, is that correct?

A. Yes.

Q. Did you believe at the time of this quarrel that Mrs. McCauley's feelings towards you had changed?

[fol. 1402] A. Yes, I had anxieties in that respect.

Q. And directing your attention to the time that you wrote this letter of June 4th which has been identified as People's Exhibit 38, I believe—what is that number—anyway, the letter of June 4th to Mrs. McCauley, what was your feeling as to the relationship at that time?

Mr. Alexander: Just a moment, that letter speaks for itself, if the Court please.

The Court: You many answer.

A. I had anxiety about it having been ended at that writing.

By Mr. Armstrong:

Q. Prior to May had you ever had quarrels with Mrs. McCauley such as the one you have told us about as being in the vicinity of Memorial Day, 1955?

A. Oh, yes.

Q. Had you ever had that feeling, as a result of those quarrels, that you heard, prior to the month of May, 1955, that your relationship had ended?

A. Yes.

Q. And with respect to quarrels that you had had, had one or the other of you generally taken the initiative as to making up after the quarrels?

A. One of us did.

Q. Which one was that?

A. Well, usually Norma.

Q. John, I direct your attention to a letter that is marked People's Exhibit I—Defendant's Exhibit I-21 for identification, and ask you if you recognize the handwriting on that letter (showing same to witness)?

[fol. 1403]

A. (Examining same) Yes.

Q. And whose handwriting is that?

A. Norma's.

Q. And in examining this letter, are you able to approximate a time that that letter was written?

A. Yes.

Q. Can you tell us approximately when that was?

A. Well, I can say very definitely that it was during the period that I was employed by the Thompsons.

Q. And that would be during what period of time?

A. About—as nearly as I can recall—about the first part of 1954 through the middle of June, 1954.

Q. In other words, this letter would have been written by Mrs. McCauley sometime during the first six months of 1954, is that your testimony?

A. Yes.

Mr. Armstrong: May I ask the Court to read this with reference to——

The Court: (Interrupting) Are you offering this in evidence?

Mr. Armstrong: Yes, your Honor (handing same to Court).

Mr. Alexander: I take it it is being offered on the same basis that counsel represented to the Court previously?

[fol. 1404] Mr. Armstrong: Yes, your Honor.

Mr. Alexander: Not me. You said, "Yes, your Honor."

Mr. Armstrong: I am assuming the Court has the same question.

The Court: This will be marked Defendant's I-21 in evidence.

By Mr. Armstrong:

Q. Now, referring to Defendant's I-21 in evidence, John, can you tell us what the approximate circumstances were out of which this note arose?

Mr. Alexander: That is calling for a conclusion, if the Court please, the operation of the decedent's mind, which this witness cannot testify to.

The Court: Objection sustained. Besides, I understood this witness to say he couldn't place the time of the receipt of this letter, except within a six-month period.

Mr. Armstrong: Yes, your Honor. My question probably sounded more specific than it was intended.

By Mr. Armstrong:

Q. You have told us, just prior to this, that you had had quarrels with the decedent in the past, is that right?

A. Yes.

Q. And do you recall—without marking the particular time—if this letter was received by you either before, during, or immediately after one of these previous quarrels?

A. It was after a quarrel, yes.

Q. It was received by you after a quarrel. All right. Now, as far as your relationship with Mrs. McCauley was con-

[fol. 1405] cerned, you have told us that you wrote this letter on June 4th.

May I ask if you ever, on any other occasions, either during or immediately after a quarrel of some type with Mrs. McCauley, if you had written other letters in a similar vein?

A. Yes. I have written many letters to her, of course, and many following such quarrels.

Q. Had you ever before expressed the view in a letter that the relationship, in your opinion, had come to an end?

A. Yes.

Q. And did you ever, prior to May, 1955, feel that the relationship had come to an end?

A. Yes.

Q. I will show you a letter that has been marked I-9 for identification and ask you if you recognize this letter (showing same to witness)?

A. (Examining same) Yes.

Q. Do you recognize in whose hand it is?

A. Yes.

Q. Whose hand is it?

A. Norma's hand.

Q. Are you able to establish any time as to this particular letter?

A. I can't be sure.

[fol. 1406] Q. Can you give us an approximate time?

A. I would think this letter was written in the fall of 1954, after I got my apartment.

Q. I show you a letter that is marked—I am sorry. (Showing same to Mr. Alexander.)

I will show you a letter that is marked Defendant's I-16 for identification and ask you if you recognize the handwriting in this letter (showing same to witness)?

A. (Examining same) Yes.

Q. In whose handwriting is that?

A. Norma's.

Q. And are you able to tell from this letter the approximate time that this letter was written?

A. I wouldn't be able to fix the time on that.

Q. Well, without saying anything of what the letter says, from the context of the letter, from the contents of the letter, are you able to tell us the relationship between yourself and Mrs. McCauley at the time that this letter was written that caused this letter to be written?

Mr. Alexander: That is calling for a conclusion of the witness, if the Court please.

The Court: Objection sustained.

By Mr. Armstrong:

Q. From an examination of this letter, can you tell us whether this letter is similar to letters that had been received by you; either during, preceding, or immediately [fol. 1407] after quarrels between yourself and Mrs. McCauley?

Mr. Alexander: That is another conclusion, if the Court please, to which we object.

The Court: Sustained.

By Mr. Armstrong:

Q. Now, you testified on cross examination that you did direct a telegram to Mrs. McCauley's home on the 18th of June, 1955, is that correct?

A. Yes.

Q. And directing your attention to the particular wording there, I believe that you referred to that as a type of threat on your part, did you not?

A. Yes.

Q. And may I ask you if prior—directing your attention to times prior to the 1st of May, rather than the end of May, the 1st of May, 1955, if you had ever had occasion to make any threats of any nature to Mrs. McCauley?

Mr. Alexander: Before he answers that, may I have that date again, please?

Mr. Armstrong: The 1st of May.

Mr. Alexander: Prior to the 1st of May?

Mr. Armstrong: Yes.

The Witness: In the context that we used the word, yes.

Mr. Alexander: I will ask that that be stricken as calling [fol. 1408] for a conclusion of the witness.

The Court: That may be stricken. I believe the question can be answered Yes or No.

The Witness: Yes.

By Mr. Armstrong:

Q. And can you tell us the circumstances that—first, can you tell us if, prior to any such communication on your part to Mrs. McCauley, there was a typical type of fact situation

that existed just prior to such communications being addressed?

Mr. Alexander: That is, again, a conclusion of the witness, if the Court please, to which we object.

The Court: Objection sustained.

By Mr. Armstrong:

Q. Directing your attention to any type of threats that were made, can you tell us approximately when any threat of this nature had been made prior to the 1st of May, 1955, approximately?

A. May I answer this way, that several times I had discussed with Norma the advisability of talking with her mother about our relationship. Now, as to the definite times, I cannot give you definite times.

Mr. Alexander: May the answer be stricken as not responsive, if your Honor please?

The Court: The answer may stand.

By Mr. Armstrong:

Q. Are you able to approximate any one of these times, either by season or month or period of any given year?

[fol. 1409] A. We discussed it in June of 1954.

Q. All right. Directing your attention to this period in June, 1954, can you describe your feeling as to the relationship at that time?

A. Yes. I was anxious about the relationship at that time.

Q. Now, you have told us, in answer to Mr. Alexander's questions along these lines—Strike that.

You testified, in answer to Mr. Alexander's questions respecting your feeling in June, 1955, by saying that you felt insecure, I believe, about the relationship at that time, is that right?

A. Yes.

Q. Directing your attention to the previous time in 1954, did you feel a similar feeling of insecurity at that time?

A. Yes, similar.

Q. And had you, on other occasions, when there had been quarrels between yourself and Mrs. McCauley, felt a simi-

lar feeling of insecurity to that which you felt in June of 1955 and in June of 1954?

A. Yes.

Q. Can you tell us if it was with respect to the exhibit before you there, Defendant's Exhibit I-16 for identification, if the letter was written at the time of one of these periods of your feeling insecure?

A. Yes.

[fol. 1410] Mr. Armstrong: I will ask that I-16 be received in evidence, if the Court please.

Mr. Alexander: In view of the defendant's statement that he cannot fix the time that that was written, I believe we can properly object to that one.

The Court: Objection overruled. It will be marked Defendant's Exhibit I-16 in evidence.

By Mr. Armstrong:

Q. Now Mr. Crooker, you remember last Friday Mr. Alexander asking you about a number of telephone calls that you had made to Norma McCauley's home, and in response to Mr. Alexander's question as to a rather large number of telephone calls on certain days, you answered it was possible you had made those telephone calls, do you recall?

A. Yes.

Q. At that time your attention was directed to the 22nd, 23rd, 24th and 25th of June, among other days; may I direct your attention to a period in April of 1955 and ask you if during the days of April, 1955, that you recall making telephone calls to Mrs. McCauley on days in April of 1955?

A. As to specific days, I don't have specific recollection, but, of course, I did make calls.

Q. And during the month of April, 1955, was the relationship between yourself and Mrs. McCauley proceeding rather smoothly?

[fol. 1411] A. As I recall.

Q. And during that period of time, directing your attention to April, 1955, can you give us an approximation of the number of telephone calls that you would be likely to make—strike that out—the number of telephone calls you did make on the days of April, 1955, from day to day?

Mr. Alexander: That would not be proper redirect examination. We object to it.

The Court: Objection overruled. You may answer.

A. For a specific month I would have to say that we made daily calls; sometimes we made as many as a dozen calls, and sometimes two calls. It is impossible without some specific recollection.

Q. In any event, during the month of April, 1955, is it your testimony that there would be days during that month that you would make as many as a dozen phone calls?

A. There could be.

Q. On other days, I take it, you might make as few as one or two?

A. Yes.

Q. Now as to this Sapphire Club that you testified that you went to many times in Norma's company, is that right?

A. Yes.

Q. And in response to Mr. Alexander's questions as to weren't you afraid to be seen in the south part of town, and [fol. 1412] you answered no: would you tell us approximately how far it is from 8307 South Figueroa to the Sapphire Club?

A. Well, it is Figueroa to Crenshaw Boulevard going west, that is about, oh, maybe three or four miles or something like that.

Q. Now directing your attention to this night of July 3rd, 1955 and the early morning hours of July 4, 1955, when you met with Norma at that time, what were your feelings toward Norma as compared to what they had been in preceding months?

A. The same.

Q. And as far as you were able to determine from Mrs. McCauley's words and actions on that particular morning, were you able to judge what her attitude toward you was at that time?

A. Yes.

Q. What was that attitude, as far as you were able to ascertain?

A. She was warm toward me, and had confidence in me.

Q. Now, when you told us on cross examination that as to this period of time that you were waiting inside the Mc-

Cauley residence on the 3rd of July of 1955 in the early morning hours of the 4th of July, that while you were in the kitchen you smoked a cigarette, or more than one cigarette, is that right?

A. Yes.

[fol. 1413] Q. Well, now, at the time that you were there did you not, while you were smoking, did you not anticipate the possibility of a sudden return of Mrs. McCauley and her escort?

A. I thought of the possibility; I was anxious about it, yes.

Q. That being so, can you tell us why you did smoke at that place and at that time?

A. Well, as I said, the door, I left the sliding door open, and I knew that the smoke would pass very quickly from the room.

Q. I see. Then as to this time later on in the morning that you were waiting in the closet and you used the glass that was there to relieve yourself. Will you tell us why you didn't go outside or go to one of the bathrooms in the house for that purpose?

A. Well, for one thing, on the same point, it was much later then, and I was more anxious about Norma coming home at that time. And, in addition, I didn't want to go outside because if I did go outside it would be right next to the maid's room.

Q. What about the possibility of using one of the bathrooms in the residence, why didn't you use one of those?

A. I felt that that would be too noisy, and, also, of course, if Norma came home and whomever she was with would find me there.

[fol. 1414] Q. Do you recall that last Friday Mr. Alexander called your attention to some small numbers that appeared in the corner of certain defendant's exhibit I-2, and there was a tiny "5": had you ever seen that number on that particular letter prior to July 5, 1955?

A. No.

Q. Had these letters been in your possession subsequent to July 5 until you came to this court room?

A. No.

Q. After July 5, when was the first time you had seen these letters that had been marked Defendant's Exhibit I?

A. When Mr. Alexander showed them to me here.

[fol. 1415] Q. Then, as far as these figures are concerned, did you at any time place any of these figures on these envelopes?

A. No.

Q. And prior to the time, as to any of these figures, were the five or eight or six that were referred to, had you ever observed or noticed those on any of those envelopes or letters prior to July 5th?

A. No, I had not.

Q. You told us, as far as these letters were concerned, that you carried these letters in the glove compartment of your automobile, is that right?

A. Yes.

Q. Was that glove compartment locked?

A. Yes.

Q. And was the key to the glove compartment customarily left in the automobile?

A. No, on my keyring.

Q. Your keyring was customarily kept where?

A. With me.

Q. On your person, is that right?

A. Yes.

Q. You told us, as far as the letters that you wrote to Norma were concerned, that she had given you some of these letters that you had written to her, is that correct?

A. Yes.

[fol. 1416] Q. And what was the purpose of that? Why did she give you your own letters that you had written to her?

A. She was afraid that they would be found in her home.

Q. At the time she gave them to you did she ask you to destroy them?

A. No.

Q. What did she ask you to do with them?

A. For me to keep them for her.

Q. And where did you keep those letters?

A. In this envelope in the glove compartment of my car.

Mr. Armstrong: (To the Court) Just for the record, directing the attention of the Court to Page 1308 of the Reporter's daily transcript, on Line 12, the word appears "morning." It appears from the context that it should be "afternoon." That is in Volume 16, Page 1308, Line 12.

The Court: Yes, this is correct, is it not, Mr. Alexander?
Mr. Alexander: That is correct, yes.
The Court: I will change that by interlineation.
Mr. Alexander: Afternoon, right.

By Mr. Armstrong:

Q. Now, directing your attention to the time that Officer Gravante and Officer Hooper and Officer Gotch were ques- [fol. 1417] tioning you, can you tell us what questions, if any, were asked you respecting the keys that belonged to Norma McCauley?

A. Yes.

Q. In the first place, in what period of time of the questioning were the questions directed to you respecting the keys?

A. Sgt. Gotch questioned me about them in the Central Station in the polygraph room.

Q. That would have been in the vicinity of 8:30 on the 5th?

A. Between—I first went there about 6:30, as I recall, 6:00 to 6:30, and it was after Officer Willis finished with me.

Q. Do you remember at that time what questions were asked you concerning these keys?

A. Sgt. Gotch wanted to know if I had the keys to Mrs. McCauley's home; if I had a set of her car keys; if I had a set of her car keys; and I think that was the substance of those questions.

Q. All right, and was there any other period in the questioning, either earlier or later, that the subject of her car keys had been mentioned by any of the officers questioning you?

A. Well, of course, in my apartment, with Sgt. Gotch, when Sgt. Gotch asked me if I had a car, and I said yes, and he wanted to know where the keys were, and I pointed [fol. 1418] out the keys, and he asked me what all those keys on my ring were, and I told him what those are, and then there was more questioning about keys at the West Los Angeles station.

Q. All right, at the West Los Angeles station who was asking you questions about the keys there?

A. As I recall, Lt. Armstrong asked me those questions.

Q. And give us the substance of the questions that were asked of you by Lt. Armstrong.

A. In substance, the same.

Q. Respecting the keys, of course?

A. In substance, the same; whether or not I had the keys to Mrs. McCauley's home and whether or not I had a set of car keys.

Q. All right, then, who else mentioned anything to you about her car keys?

A. Of course, Officer Gravante, when I was writing the statement, asked me what happened to the knife and to the keys.

Q. And was that before or after you wrote the portion of this statement respecting the car keys?

A. That was before.

Q. All right. Then, as far as having taken some money from Mrs. McCauley's home, had that particular accusation been made to you prior to the time of your writing the confession?

[fol. 1419] A. Yes, sir.

Q. And by whom had that been made?

A. Sgt. Gotch.

Q. Did any other officer, either accuse you or question you along this particular line, the money in Mrs. McCauley's home?

A. Officer Stambler also said that I took her money.

Q. All right. In this statement that you wrote on this occasion, you made this statement, "Somewhere along the line I must have thrown out her keys and the knife, because I didn't have them in the things I threw in the incinerator."

What purpose did you have in your mind or what thought did you have in your mind at the time you wrote those things?

A. Officer Gravante said, what did I do with the keys and the knife, and I felt I had to explain it.

Q. Why did you feel you would have to explain it?

A. I was trying to make something they would believe.

Q. All right. Then you said, as far as your clothes were concerned, that you threw your clothes in the incinerator, I believe. You said, "I took off my clothes and threw them into the incinerator."

A. Yes.

[fol. 1420] Q. Did you, as a matter of fact, throw any clothes of yours into the incinerator on the early morning hours of July 5th?

A. No.

Q. Or any other time around that period of time?

A. No, I did not.

Q. July 2nd, 3rd, or 4th?

A. No, I didn't.

Q. Why did you say in here that you threw your clothes in the incinerator?

Mr. Alexander: That is calling for a conclusion.

The Court: You may answer.

The Witness: Because I felt that with a stabbing, that there would be dirty clothes.

Mr. Alexander: May I have the answer read?

(Answer read.)

The Witness: Bloody clothes.

By Mr. Armstrong:

Q. All right. Now, after the questioning that took place in District Attorney Roll's office, from the time you were arrested up until the time that this questioning took place, had you been allowed to consult with an attorney?

A. From the time it began until the time that questioning took place?

Q. Until the questioning in Roll's office began.

A. No.

[fol. 1421] Q. Had you had any opportunity to consult with an attorney?

A. No.

Q. Do you recall that there was an officer that testified in this trial that identified himself as being the jailer at the West L. A. jail?

A. Yes.

Q. Did he, in the morning of the 5th or the 6th of July, ask you if you would care to use the telephone?

A. No, he did not.

Q. Did he ask you if you would like to use the telephone to call friends of yours or your family?

A. No, he did not.

Q. Did he ask you if you would like to use the telephone to call an attorney?

A. No.

Q. Did he make a telephone available to you to make any kind of a call you would like?

A. No.

Q. Did you have any conversation along this line whatsoever respecting attorney, friends, or family, or telephone calls?

A. No, I did not.

Q. Or any part of those?

A. No, I did not.

Q. Now, directing your attention to the month of June, [fol. 1422] 1955, in addition to the times that you have told us about, was there any particular date in June, after the 1st of June, 1955, that you can place this time that you had occasion to see Norma McCauley?

A. I saw her the first part of June in my apartment.

Q. When you say the first part, can you tell us approximately when that would be?

A. I can't be very exact about it, no. I have tried to fix the date.

Q. In addition to this time that—you do recall that that was in June?

A. Yes.

Q. As respects this letter that you wrote to her that apparently was written on the 4th of June, 1955, are you able to place the date as to whether this meeting in your apartment was before or after?

A. It was after that.

Q. It was after the 4th of June?

A. Yes.

Q. Can you tell us another date that you have in your mind that you saw Norma McCauley during the month of June?

A. We had lunch in a drive-in on the day that she loaned me money.

Q. What day of the month was that?

A. The 10th, I guess.

[fol. 1423] Q. How do you place the 10th as being the date?

A. Because it was the same day that I deposited the money.

Q. Whatever day it was she lent you the money, you met that day in a drive-in?

A. Yes.

Q. What drive-in was that?

A. I think it was the drive-in at Sepulveda and Pico. It was right in that area. I think it is right on the corner of Sepulveda and Pico.

Q. And on that occasion, how long did you spend together?

A. All of the time—I would say something in the neighborhood of two, two and a half hours, something like that.

Q. You had lunch together on that occasion?

A. Yes, we did.

Q. What was her demeanor or attitude on that occasion?

A. That was the day that I felt she looked very worn, very tired.

Q. And as far as her attitude or expressions toward you were concerned, as compared to what her previous attitude was, were they unusual, the same, or different in any way?

A. Generally the same, I would say.

[fol. 1424] Q. After the 10th of June, when was the next time during the month of June that you saw Norma?

A. I saw her in her home just shortly after that.

Q. And that was when?

A. I don't know the date. It was shortly after I saw her in the drive-in.

Q. Can you tell us approximately when that was in respect to the 10th? Was it two days later? Ten days later?

A. It would be something like four or five days later. As I recall, when I saw her in the drive-in, it was on a Friday, and she had a week end engagement that week end, and it was, as I recall, the first part of that next week. That is, as near as I can come to it.

Q. Did anything untoward or unusual occur at that particular time, the particular meeting you are just describing?

A. Nothing particularly unusual, no.

Q. How long did you visit with her on that occasion?

A. About two or three hours. I don't recall exactly.

[fol. 1425] Q. Incidentally, you, some time ago, identified this picture as being a picture that was in your apartment,

to which Officer Stambler referred, I believe (showing same to witness).

A. (Examining same.) Yes.

Q. And was this a picture that was made of you and Mrs. McCauley?

A. Yes.

Q. Where was this picture made?

A. At the Wilton Hotel in Long Beach.

Q. Approximately when was that made?

A. In June of '54, as nearly as I can recall the month. It was right in that period.

Q. At the time the officers were questioning you in your apartment, respecting your activities of July 4th, Officer Stambler inquired respecting this particular picture, is that right?

A. Yes.

Q. I will ask that—this is Defendant's Exhibit B, I believe. I will ask that that be received in evidence, if the Court please.

The Court: That will be marked Defendant's B in evidence.

By Mr. Armstrong:

Q. Now, directing your attention to the early period in time of questioning by the officers that was going on in your apartment, at that time had you been informed by anyone that you were being—that you had been arrested and was being arrested on a suspicion of murder?

[fol. 1426] Mr. Alexander: That is assuming a fact not in evidence. There is no evidence here that he was questioned in his apartment, if the Court please.

The Court: Yes, the objection is sustained.

By Mr. Armstrong:

Q. All right. During the period—during the time that you were in your apartment and you testified that the officers were apparently searching through your possessions, were you informed that you were arrested on a charge of suspicion of murder?

A. Yes.

Q. And was that before or after the officers went out to your car and got the envelope containing the notes and poems?

A. That was before.

Q. That was before?

A. Yes.

Q. And was that before or after Officer Stambler inquired respecting Defendant's Exhibit B in evidence?

A. As I recall, that was before.

Q. Now at the time that you were being questioned in District Attorney Roll's office, while this questioning was going on to which Mr. Alexander referred in this morning's questioning of you, were the officers present in the same room with you and with Mr. Roll?

A. Yes.

[fol. 1427] Q. And were these officers the same officers who had been interrogating you the day before?

A. Yes.

Mr. Armstrong: You may re-cross examine.

Re-cross examination.

By Mr. Alexander:

Q. Directing your attention to Defendant's B, the photograph, isn't it a fact that Stambler asked you, "Who is the woman in the picture with you?"

A. I believe his words were, "Who is this?"

Q. And that ended the questioning concerning this picture, did it not?

A. Yes. I answered his question. That was all.

The Court: We will take the afternoon recess at this time, Ladies and Gentlemen.

Do not discuss the case among yourselves nor talk to anyone about it, nor allow anyone to talk to you about it. Do not form nor express any opinions or conclusions about the case until the matter is finally submitted to you.

We will take a ten minute recess.

(Short recess.)

The Court: The jury is present. You may take the witness on re-cross examination.

[fol. 1428] By Mr. Alexander:

Q. Mr. Crooker, directing your attention again to Defendant's Exhibit I-9, and to the upper right-hand corner of that envelope, you see that small figure "2" there?

A. It looks something like "2", yes.

Q. Do you question that that is a "2"?

A. I would say it is probably a "2".

Q. Did you place that "2" there?

A. No, sir.

Q. Was it on there when you received that note?

A. I don't know.

Q. Directing your attention now to Defendant's Exhibit I-21, in the upper right hand corner of this envelope, do you see that "9"?

A. Yes.

Q. That looks like a "9" to you, does it not?

A. Yes.

Q. Did you place that "9" there?

A. No.

Q. You have no idea how those numbers came——

A. No, I don't.

Q. —on these exhibits? Now, you told us about your anxiety in June, 1954. Was your anxiety relieved any when she gave you the money to buy your car?

A. It was relieved long before that.

Q. And was your anxiety relieved any—and to buy your [fol. 1429] car she gave you how much?

A. $400.00, as I recall.

Q. Was your anxiety relieved any when you gave Norma McCauley this note, the evidence of indebtedness of $450.00 dated June 1, 1954?

A. That didn't have anything to do with anxiety.

Q. In any event that did not relieve your anxiety, is that correct?

A. No.

Q. Then in June of 1955 you again experienced some anxiety, did you not?

A. Yes.

Q. On June 10, 1955 you received $300, approximately, from Norma McCauley, did you not?

A. Yes.

Q. Did that relieve your anxiety any?

A. Again that didn't have anything to do with anxiety.

Q. It did not, is that your answer?

A. That is correct.

Q. You told us you did not want to go outside the nursery because that would have been too close to the maid's room?

A. Yes.

Q. You could have left through door D-1, the same door you told the police officers you entered on the night of July 4th, did you not?

A. I could have. That was right next to the maid's room, of course.

[fol. 1430] Q. You could have returned right from that door, could you not?

A. Yes.

Q. You could have gone through the bedroom, through those doors, could you not?

A. Not without going into the hall, of course.

Q. You came in through the hall, did you not?

A. Yes, I did.

Q. After you got into the kitchen on the night of July 3rd you left those sliding doors open, did you not?

A. While I smoked, yes.

Q. Did you ever close them?

A. Oh, yes.

Q. When was that?

A. After I had smoked.

Q. Then you left those doors open for the purpose of letting the smoke out, is that what you mean?

A. Yes.

Q. When you were through smoking you closed the doors?

A. Yes.

Q. You could just as well have stayed in that area where the sliding doors are and smoked, could you not?

A. I was in that general area.

Q. You were in the kitchen smoking, were you not?

A. No, just back of the kitchen, an open space there, and [fol. 1431] actually just back of the bar.

Q. Now, Mr. Crooker, did you not tell us you entered the sliding doors and went to the kitchen and got a glass from that bar and took a drink of water, did you not?

A. I told you that, yes.

Q. The sink was on the north of that kitchen wall?

A. That is correct.

Q. Isn't that where you were smoking?

A. No, sir.

Q. You mean you left that area and came back to the dining room?

A. Yes, sir.

Q. Why couldn't you have waited there for Norma McCauley to come home?

A. Because she—— Can I say what she told me?

Q. I am asking you why could you not have waited there until Norma came home?

A. Because it was anticipated she would be accompanied by someone, and if she were, that I should not be seen by anyone who accompanied her.

Q. You had previously hidden in the brush behind the house, had you not?

A. Yes, sir.

Q. You could have remained hidden there, could you not? [fol. 1432] A. I could have.

Q. Now, tell me this, on June 10th, the day you received this money from Norma and you had lunch with her, did you come across anybody you knew?

A. Not that I recall.

Q. As far as you know, nobody saw you on that day, that is, that was friendly to you or Norma McCauley?

A. Well, of course, she did her banking, as I recall, at the Security-First, and she knows Roselle there.

Q. Did you see her at the bank?

A. Yes.

Q. You were in the bank with her, were you?

A. Not at the bank.

Q. You waited outside until she got the money, isn't that right?

A. I was outside, yes.

Q. As she came out with the money, that is when you got it?

A. Shortly thereafter.

Q. Then, you say four or five days after that you spent two or three hours with her; where was that?

A. In her home.

Q. Did anyone see you there?

A. I believe that my car was parked right out in front.

and Marilyn Low came up that night and tooted her horn and Norma went out, but Marilyn, to my knowledge, did [fol. 1433] not know that was me.

Q. Did anyone come into the house that night?

A. While I was there?

Q. Yes.

A. No.

Q. Where was the maid? Was she there?

A. As I recall—I don't think Norma had a maid at that time. I can't recall, whether she did have one in a part of June or whether she didn't have one in a part of June.

Q. That would bring it about the 14th or 15th day of June; that would bring it to the 14th or 15th day of June?

A. Well, I can't fix the date that close, but it would be something in that area of time.

Q. If the 10th you got the money and four or five days later you saw her, that would bring it to the 14th or 15th, would it not?

A. I wouldn't want to fix those days, no.

Q. When you told counsel here on redirect that it was four or five days after the 10th of June, was that correct or not?

A. Something in that area of time.

Q. Does that help refresh your recollection as to whether or not you saw Norma on the 18th of June?

A. I can't fix that day.

[fol. 1434] Mr. Alexander: I have nothing further, your Honor.

Mr. Armstrong: Nothing further.

The Court: That is all.

Juryman Hoyt: Can I ask a question?

The Court: Yes.

Juryman Hoyt: The night of July 4th, when you kept the house under surveillance and were across the street in the house under construction, what clothes were you wearing that night?

The Witness: My brown suit.

Juryman Hoyt: What kind of a shirt?

The Witness: A pale yellow shirt.

Juryman Hoyt: Were you asked any questions in the offices as to what clothes you were wearing that night?

The Witness: As I recall, no specific question. While they were in my apartment, they took out all of my clothes and examined them, but as I recall, beyond that, no specific questions about what I was wearing.

Juryman Hoyt: When you got home in the early morning you took your clothes off. Did you empty the pockets?

The Witness: I don't recall. My suit was hanging right in the living room. I hadn't even put it away when the officers came. In fact, it was still hanging right there on the light fixture.

Juryman Hoyt: Was your shirt still there?

The Witness: My shirt was on the dresser.

The Court: That is all.

[fol. 1435] Mr. Alexander: One or two more questions.

Re-cross examination.

By Mr. Alexander:

Q. There is an incinerator that you use in your apartment, is there not?

A. There is an incinerator for the whole apartment building, yes.

Q. And there is a chute where you deposit your waste material, is there not?

A. Yes, out in the hallway there is a chute.

Q. Now with reference to the door to your apartment, where was this chute?

A. Let's see. You go out my door. My door is right across from the manager's. Then you walk down the hallway into the lobby entrance, across the lobby entrance, via another apartment door, and it is just as you go down the stairs into the cellar.

In the apartment did you tell the officers that the yellow shirt that you say was there was worn by you the previous night?

A. As I say, they didn't—I believe they did ask me what I was wearing, and I pointed out that suit.

Q. Who asked you that?

A. I believe a lab man asked me that.

Q. In your apartment?

[fol. 1436] A. Yes.

Q. Now, the only lab man that came there was Pinker and Stilson, isn't that right?

A. That elderly gentleman?

Q. Yes, Captain Stilson?

A. Of course, none of them were identified, but as far as I know those were the only men that appeared.

Q. And you told Pinker that the yellow shirt that you pointed out was the one that you wore the night before?

A. Now, Mr. Alexander, I am not saying that. I am saying I think they asked me what suit I was wearing, and I think I pointed out that suit, and I don't recall specific questions, for example, about the shirt.—

Q. When did you remember pointing out to anybody in your apartment the suit you wore the night before? When did that come back to you?

A. When did I recall it?

Q. Yes.

A. I just thought of it.

Q. As you are sitting there on the stand, is that right?

A. Yes.

Q. And when did you recall about the yellow shirt?

A. You mean about my wearing it?

Q. Yes.

A. I have recalled that for some time.

[fol. 1437] Q. That came before, is that right?

A. Well—yes, of course. I have considered everything that I wore.

Q. Did anyone ask you at that—strike that

Did you tell anyone in that apartment, your apartment, the day that you were arrested, that the yellow shirt that was there was worn by you the night previously?

A. I don't recall that specific questioning.

Q. Or anything along those lines?

A. Of course—I do recall the suit, and I think there might have been other questions. I don't have a specific recollection about them.

Q. Who asked you those questions?

A. Mr. Pinker—I haven't met him, but if I have him in my mind, and this elderly gentleman, were getting my clothing from the closet, and as they got them, asked me various questions about clothing, for example, whether my suits

were two-pants suits, and it is my recollection that one of them, either Mr. Pinker or that other gentleman, asked me what suit I had been wearing yesterday.

Q. And you told them the brown suit that was there, and the yellow shirt?

A. As I recall. I am not sure about the shirt.

Mr. Alexander: Nothing further.

[fol. 1438] Re-direct Examination.

By Mr. Armstrong:

Q. Now John, when you say that it just occurred to you, in response to Juror Hoyt's question, as to whether or not you had had a conversation as to the shirt you were wearing, you didn't mean to tell us that it just occurred to you that moment, the fact of which shirt you actually were wearing?

A. No. I, of course, have gone over all my clothes in my mind. I knew what I was wearing. I knew it back in July.

Q. You were wearing a pale yellow shirt?

A. Yes.

Q. Were you wearing a tie?

A. Yes.

Q. What kind of a tie, do you recall?

A. Yellow, striped, with a dark maroon—not maroon—purplish striped, yellow stripe and a purple stripe.

Q. And as to your suit, what color was the suit you were wearing?

A. My brown suit.

Q. And you say "your brown suit". Is this the brown suit here you were wearing on that particular night (showing same to witness)?

A. (Examining same.) Yes.

Q. And is this the only brown suit you have of this ap-

[fol. 1439] proximate shade and cut?

A. Yes.

Q. You have a definite recollection that you were wearing this shirt on the night of July 4th and the early morning hours of July 5th, is that right?

A. Yes.

Mr. Alexander: You said "shirt", Mr. Armstrong.

Q. I meant suit, brown suit, this suit and trousers.
A. Yes.

Mr. Armstrong: I will ask that this be marked as Defendant's O, I guess it is, is it not?
The Court: Defendant's O in evidence.
Mr. Armstrong: How about shoes? Do you remember the shoes you were wearing?

A. I don't—I cannot exactly recall what shoes I was wearing. Whomever came to get my things from my apartment should be able to tell, because as I recall——

Mr. Alexander: (Interrupting) I will ask that this be stricken as not responsive.
The Court: It may be stricken.

By Mr. Armstrong:

Q. Anyway, you don't recall the precise shoes you were wearing? Were you wearing a top coat, do you recall?
A. No.
Q. Were you wearing any other outer garments, such as a scarf or anything in addition over your coat in any way?
[fol. 1440] A. No.

Mr. Armstrong: I guess that is all.
Mr. Alexander: No questions.
The Court: That is all. The next witness.
Mr. Armstrong: The defense will call Officer Stambler.

William Stambler: called as a witness by and on behalf of the Defandant, having been previously sworn, was examined and testified as follows:

The Court: You have already been sworn. Be seated and state you name again.
The Witness: William Stambler.

Direct examination.

By Mr. Armstrong:

Q. Officer Stambler, you previously testified here—you testified with respect to People's Exhibit 30 in evidence and

described to us the method of dusting this particular item and removing the fingerprints from it, do you recall?

A. That's right.

Q. Of course, you recall the fact of this dusting as well, do you not?

A. Yes, that's right.

Q. All right. Would you tell us again when that was done, please?

A. That was done on the morning of the 7th.

[fol. 1441] Q. Now directing your attention to a prior time to that, can you tell us what was the first time that you went to the home at 1100 Somera Road of Norma McCauley after the 4th of July?

A. It was on the morning of the 5th.

Q. The morning of the 5th of July?

A. That's right.

Q. You went there with Sgt. Gotch, is that right?

A. That's right.

Q. All right. Now, I will show you here Defendant's Exhibit A in evidence, and ask you first if you recognize the premises portrayed here (showing same to witness).

A. (Examining same.) I do.

Mr. Alexander: Pardon me. May I ask counsel, through the Court, is this a defense witness at this time?

Mr. Armstrong: Yes, I am making him a defense witness.

Mr. Alexander: I wanted to know that.

Q. May I ask you, when you were there on July 5th of 1955, did you do any dusting for fingerprints?

A. I did.

Q. And can you tell us what you dusted? Refresh yourself, if necessary, with the picture there, or with any other pictures in the room that might be of assistance to you.

A. I dusted this entire table here (indicating.)

Q. When you say "the entire table", you are referring——

A. (Interrupting) The full length of the dressing table.

[fol. 1442] Q. Would you indicate if you recognize the—where the table you have referred to appears on People's Exhibit 9, if you will just indicate for the jury, the table you refer to?

A. It was in her bedroom.

Q. For your help, this is the bedroom here (indicating).
A. Well, this is the dressing table here (indicating).
Q. The dressing table on the east wall that is designated as two feet four inches high, is that right?
A. Yes.
Q. Twenty-four something high——
A. (Interrupting) It is this dresser there (indicating). The entire dresser, or whatever you want to call it, was dusted all the way through.
Q. If you will stand back, so that the jury can see it. Then, can you tell us what else was dusted for prints?
A. I dusted a doorknob.
Q. Which doorknob was that?
A. The doorknob into the bathroom.
Q. That would be the doorknob into D-4?
A. Yes.
Q. All right. Was there anything else dusted?
A. The plastic purse that was on the dresser.
Q. All right. Anything else?
A. I think that was about all.
Q. How about this dresser over here that has been [fol. 1443] marked as a dresser three feet eight inches high over there near the door (indicating)?

Do you recall if you dusted that area, too?

A. No, because it was all cluttered up with papers and different articles on it. It was impossible to dust it.
Q. How about the area that is referred to as "Headboard" above the top of the bed?
A. No.
Q. Okay. You can resume the stand, Officer. Thank you. Now, what time of the day was it when you came to this room, if you recall?
A. Around 9:00 o'clock on the morning of the 5th.
Q. In the morning of the 5th?
A. Yes.
Q. And I don't know whether I asked you this before. Do you recall; when you came in there, if there was a black purse about in this area on the bed where an X is indicated (indicating)?
A. I don't recall it.

Q. Do you remember, while you were in there, seeing a black purse?

A. No, I don't recall that, either.

Q. I believe when you testified for the People in this case, Officer Stambler, you told us that in dusting for fingerprints that you can dust with a light powder on dark objects, and [fol. 1444] a dark powder on light objects, is that not right?

A. That's right.

Q. So that if you wanted to dust, can you tell us whether that would be more or less difficult to dust than a light object, or is it about the same?

A. About the same.

Q. Directing your attention to People's Exhibit 17 in evidence, there appears on the top of this desk to be a black zipper-top item, which may or may not be a purse. Does that refresh your recollection? Do you remember that?

A. Yes, I remember that.

Q. What did it appear to you to be at the time you saw it?

A. More or less—oh, it wouldn't be called a purse, I don't think. Some place where you would keep letters and communications.

Q. A letter holder, something like that. Do you remember what the material was of that object?

A. I am not sure.

Q. Now, of course, in the picture, being a black and white picture, it just appears dark. Do your remember the color that it was?

A. No, I don't.

Q. Do you remember whether or not you examined its contents?

[fol. 1445] A. No, I didn't go into the contents.

Q. Are you able to see, from the pictures that there are before you, evidence of the fact that you dusted the plastic purse?

A. Yes.

Q. And how do you—how can you tell that?

A. There is a fingerprint powder on the plastic purse.

Q. In other words, what appears to be sort of dark——

A. (Interrupting) Dark smudges.

Q. In examining that photograph, is there anything on the black—the thing you call the letter holder—to refresh

you as to whether or not you may have dusted that with light powder?

A. No, I don't remember.

Q. Now, as to the plastic purse, what type of material did the side of that purse that you dusted appear to be?

A. Plastic.

Q. That, too, was plastic?

A. White plastic.

Q. Was it a glass type of plastic?

A. It was a very slick plastic.

Q. I see, and as far as your dusting that for fingerprints is concerned, what result did you obtain?

[fol. 1446] A. Nothing on it.

Q. You were able to find no fingerprints?

A. Smudges all over the thing, but there were no readable fingerprints on it that I could read.

Q. Now, Officer Stambler, I believe you testified before that you had rather extensive experience in the taking and recording of fingerprints, have you not?

A. That's right.

Q. Can you tell us, Officer Stambler, whether it is true that a partial fingerprint can sometimes be used as a means of positive identification?

A. Providing it has enough points in it.

Q. And could you tell us briefly what you mean by points?

A. Well, the different ridges, the deltas in this fingerprint, the bifurcations in the fingerprint, and the islands, there have to be at least ten specific points in that partial to be able to make it out.

Q. That is, in order for you to be able to say with certainty that it was a certain person's fingerprint, you would want ten——

A. Or more.

Q. —or more points of identification?

A. That's right.

Q. And just for our information, can you tell us how many points of identification you would find in a perfect [fol. 1447] print, that is, an inked print and another inked print?

A. That would be pretty hard to say because some prints would have five or six ridges in it. Some would have twenty

five ridges in it. Some might even go as high as thirty ridges in it.

Q. In an average fingerprint, where you had a perfect print under ideal conditions to compare with another print under ideal conditions, would there be as many as twenty points of identification?

A. There could be.

Q. Could there ever be as many as fifty?

A. No, I don't think the finger would run that far. It might.

Q. But in any event, as far as this purse was concerned, you found no clearly defined fingerprint of any kind, is that right?

A. That's right.

Q. How about the top of the dresser?

A. There was none on that thing that you could read. They were all smudged.

Q. I see.

A. There wasn't a clear print there.

Q. And how about the handle to the dresser?

A. No.

Q. How about the doorknob to the bathroom?

[fol. 1448] A. There was one on it.

Q. And was that a readable print?

A. Yes, it was partially readable.

Q. And did you make an attempt to classify that print?

A. Well, it was taken to the S. I. B., or the Latent Fingerprint Buerau, and I think that fingerprint was classified as Mrs. McCauley's print.

Q. I see. Well, then, as far as the area in this bedroom that you examined, is it safe to say, in summarizing up what you said, that you dusted what occurred to you, in your experience, and from what you saw on the scene, to be every possible area of taking the readable print?

A. That's right.

Q. And your findings on the 5th of July, at least, of 1955, were negative?

A. That's right.

Mr. Armstrong: Thank you, Officer Stambler. You may cross examine.

[fol. 1449] Cross examination.

By Mr. McCurdy:

Q. Mr. Stambler, you used the expression "smudge or smudges" several times. Would you please tell us what you mean by that?

A. Well, a smudged print is a print that you are unable to read. The lines are smeared and when you draw your finger through a certain object you leave smudges.

Q. In other words, if I put my hand down on this table and put pressure on my fingers and then move them in that manner (demonstrating), would that cause a smudge?

A. Yes.

Q. Can you use a smudge for identification?

A. No.

Q. The reason is because it is blurred?

A. Yes.

Q. The points of comparison do not stand out?

A. That's right.

Mr. McCurdy: No further questions.

Re-direct examination.

By Mr. Armstrong:

Q. Officer Stambler, pardon me a minute, to use Mr. McCurdy's illustration a little further, if I put my fingers down on the table and made an imprint and then drew my fingers downward as he indicated, wouldn't I be likely to [fol. 1450] leave a clear readable print at the termination of the movement?

A. Not at the termination. You would have nothing but a smear, but at the beginning of the movement you might have a few ridges shown.

Q. I see. I believe a juror had a question.

Juror Hoyt: I understand that you and Officer Gotch went to the defendant's apartment on the 5th of July and relieved the Hollywood police officers?

The Witness: That's right.

Juror Hoyt: Was your attention directed at that time to any——

The Court: (Interrupting) Just a moment. I am going to have to limit the jurors, just as counsel are limited, to cross examining on the subjects covered on direct examination. Unless you are covering that subject, I will have to limit the examination.

Anything further from this witness?

Mr. McCurdy: Nothing further.

The Witness: Thank you.

Mr. Armstrong: Mr. Pinker.

RAY H. PINKER, called as a witness on behalf of the defendant, after being first duly sworn, was examined and testified as follows:

The Clerk: Be seated and state your full name, please.

The Witness: Ray H. Pinker, P-i-n-k-e-r.

[fol. 1451] Direct examination.

By Mr. Armstrong:

Q. Mr. Pinker, what is your business or occupation?

A. Technical director of the Scientific Crime Investigation Laboratory of the Los Angeles Police Department.

Q. And how long have you been so employed, Mr. Pinker?

A. Going on twenty-seven years.

Q. And do you have a particular field in which you are qualified for this work? That is, are you an engineer, or a lawyer, or a policeman, or what is your background?

A. I studied chemistry at the University of California in Los Angeles for two years, and an additional three years at the University of Southern California in Los Angeles. Received a Bachelor of Science Degree from the University of Southern California in 1926.

For one year I was a teaching fellow, Department of Chemistry, University of Southern California. For half a year research fellow, Department of Chemistry, University of Southern California, and for two years I was Chief Chemist for the Arthur R. Moss Laboratories, a commercial testing laboratory in the City of Los Angeles.

I have been with the Los Angeles Police Department

since the first of July, 1929, as Chief Forensic Chemist and Director of the Laboratory, as the laboratory group.

Q. And as Chief Forensic Chemist for the City of Los Angeles Police Department, are you the person in charge [fol. 1452] of scientific crime investigation for the Los Angeles Police Department?

A. Yes, as far as it pertains to laboratories under the scrutiny of the laboratory.

Q. And are you a member of the Los Angeles Police department?

A. I am a civilian employee.

Q. Of the department?

A. Yes.

Q. But you are not, yourself, a police officer in the strict sense of the word?

A. I am not a police officer, no.

Q. Now, as far as this particular case is concerned, Mr. Pinker, did you have occasion on the 5th of July, and subsequently thereafter, to make an investigation with respect to the death of Norma McCauley?

A. I did, on the—beginning on the 5th of July.

Q. Directing your attention to the 5th of July of 1955, where first did you go?

A. I first went to an address in the Bel Air District, which address I don't at the moment recall.

Q. Would it refresh you if I said 1100 Somera Road?

A. Yes, that is the address. I believe we arrived there about — to the best of my recollection now — this was five months ago—about 10:30 in the morning. I went there with Captain Warren Stilson, and Lt. Leland V. Jones.

[fol. 1453] Q. Is Lt. Jones a member of your staff?

A. He is. He is also a chemist.

Q. All right. And upon arriving at that home, did you go into a particular room of that home, or did you focus your attention on one particular room, as opposed to other rooms?

A. Yes. My attention was focused on the bedroom — in the bedroom where a young lady had met her death.

Q. Directing your attention to what had been marked People's Exhibit 9 in evidence, Mr. Pinker, I will ask you if you recognize these premises?

If I may orient you to say this is Somera Road (indicating). This is the driveway (indicating). This is the garage (indicating), the dining room and living room (indicating). This is the bedroom you have indicated.

A. Yes, this is the bedroom that I have now pointed my finger to (indicating).

Q. Do you have some pictures with you that were taken on that particular occasion; that is, in addition to the ones before you?

A. Yes, I have.

Q. If I may first direct your attention to these pictures, and ask you—directing your attention to Defendant's Exhibit A in evidence, and ask you if you recognize generally the scene there portrayed (showing same to witness).

[fol. 1454] A. (Examining same.) I do.

Q. And that was the scene approximately as you saw it on the fifth of July of 1955, is that right?

A. It was approximately, yes.

Q. And then further directing your attention to a picture which purports to be the top of a dresser that has been marked People's Exhibit 17 in evidence, I will ask you if you recognize that as being the general situation that you observed on that occasion (showing same to witness).

A. (Examining same.) Yes.

[fol. 1455] Q. All right. Now, as far as your activities in that particular room were concerned, Mr. Pinker, what did you personally do?

A. Well, I observed the condition of the body lying face down on the chaise lounge with some sort of garrot around her throat. I believe it was a shawl, as I recall. I observed a heavy pool of blood on the cushion of the chaise lounge, and blood spatters in the general area of the chaise lounge.

Q. All right. Now, do members of your staff and under your direction, or the direction of other officers there, and in your presence, did they make photographs of the scene?

A. Photographs were taken by James Coberly of our photographic section, that is, the photographic section of the Scientific Investigation Division from downtown. Prior photographs had been taken, I believe, by Mr. Stambler of the West Los Angeles Division, and Mr. Coberly took some in addition thereto.

Q. Now, directing your attention particularly to an ashtray which appears in People's Exhibit 17 in evidence, this picture here (indicating), do you recognize that ashtray?

A. (Examining same) I do.

Q. Do you have that ashtray with you at the present time?

[fol. 1456] A. I have not.

Q. Do you have any other ashtrays that were taken from the premises?

A. I have an ashtray that was delivered to me on the 7th of July, allegedly, from this address.

Q. I see, but as far as this particular ashtray is concerned, you don't have that one?

A. I don't have that particular ashtray.

[fol. 1457] Q. Now, I direct your attention to what appear to be stains on the drapes in the vicinity of the chaise lounge or the body that has been identified as that of Mrs. McCauley, pictured in this picture, and ask you if at that time you were in this room on July 5th and you observed these stains on the drapes?

A. I did.

Q. From your experience and investigation of criminal cases, and from observation that you made on the scene at this particular date, were you able to form an opinion as to what those stains were?

A. It is my opinion that they were blood stains. They had all the appearance of blood stains, and there was blood heavily contaminating in the chaise lounge. These drapes were immediately behind the chaise lounge.

Q. All right. As respecting the drapes and the blood stains that you observed, or what you observed appeared to be blood stains on the drapes next to the chaise lounge, did you make as examination of that particular blood as to typing it or classifying it in any manner?

A. No, I did not.

Q. As to the body of the decedent, did you have occasion, either then or in your laboratory, to make an examination of the fingernails of the decedent?

A. I had had the fingernails of the decedent clipped at the Coroner's office at, I presume, the time of the autopsy. [fol. 1458] I had gone there for the purpose of attending the autopsy the following morning, which was July 6th. But while there, and before the autopsy began, I had instruc-

tions to proceed to an address near the intersection of Western and Melrose.

As I recall, I had asked Dr. Newbarr to see that the fingernails were clipped for me. I picked those fingernails, those fingernail clippings up at a future date.

Q. All right. As far as the fingernail clippings are concerned, did Dr. Newbarr, to the best of your knowledge, carry out your instructions and clip the fingernails of Norma McCauley?

A. I don't know who clipped the fingernails. I received fingernails labelled as having been clipped from the body of Norma McCauley.

Q. I see. These were delivered to you by a representative of the Coroner's office?

A. Yes, by Mrs. Lisle, Dr. Newbarr's secretary.

Q. Do you have any fingernail clippings with you at the present time?

A. I have (producing).

Q. You have given me here two envelopes marked "Norma T. McCauley, fingernails, right hand; Norma E. McCauley, fingernails, left hand."

These were the envelopes delivered to you by Dr. New- [fol. 1459] barr's secretary?

A. They are.

Mr. Armstrong: If the Court please, I would like to have marked these as one exhibit.

The Court: They will be marked Defendant's Exhibit P for identification.

By Mr. Armstrong:

Q. Subsequent to the time that these were delivered to you and in your laboratory, did you make an examination of these fingernails?

A. I did.

Q. Can you tell us what you were examining them for; what was the purpose of that particular phase of your investigation?

A. I made an examination of the underneath surfaces of the fingernails to see whether or not there was any foreign contaminant present.

Q. Such as?

A. Such as skin tissue.

Q. Now, what was the result of that examination?

A. My results were negative. As to any type of skin, I found nothing that was of any significance to me.

Q. Was there any evidence of any blood underneath the fingernails?

A. I don't recall at this time.

Q. Would it refresh your recollection to examine the fingernails in their present state, or have they been altered? [fol. 1460] A. They have not been altered in any way. It would be necessary for me to re-examine them under the microscope. I made this examination five months ago, and I don't recall specifically what I observed other than I did not observe any foreign contaminants. Blood would have been meaningless anyway because her hands and body were quite bloody.

Q. I see. As far as any foreign contaminant as you have defined it, you found a negative result in your examination?

A. Yes.

Q. Now, Mr. Pinker, in your work in this field of examination can you tell us what evidence you have been able, or you are able, to find in such an examination as you made in this case when your results are positive rather than negative? What do you find, if you find what you are looking for?

Mr. Alexander: That is objected to as improper, if the Court, please, incompetent, irrelevant and immaterial.

The Court: Objection sustained.

By Mr. Armstrong:

Q. Directing your attention again to July 5th, 1955, did you have occasion to see the defendant, John Crooker, on that date?

A. I did.

Q. Where was that?

[fol. 1461] A. That was at his apartment near the intersection of Western and Melrose Avenue. I don't recall the apartment house name.

Q. While there, Mr. Pinker, could you tell us generally what you did?

A. There I examined his clothing and shoes and bed. And

I isolated out some garments which I took to my laboratory for additional examination.

Q. On what basis did you isolate out certain garments?

A. There appeared to be some stained material or something that looked suspicious that I wanted to examine under the microscope. I didn't have a microscope with me.

Q. Did you subsequently make an examination of these particular garments?

A. I did.

Q. What was the result of that examination?

A. Negative.

[fol. 1462] Q. Do you recall the particular garment that you had under suspicion, what type of garment it was, was it a shirt, trousers, underwear or socks?

A. As I recall, these were trousers and coats, and I believe there was a raincoat and a top coat involved. There were a number of such garments. He had a large number of garments and many clothes, and I was able to eliminate there some at the scene and others I wanted to take to the laboratory with me for additional examination.

Q. Do you recall on that occasion—by the way, the defendant was present at the time, he was in the apartment, was he not, when you were there at that time?

A. He was, yes.

Q. Do you recall at that time, while you were in the apartment, if you made inquiry of the defendant as to what he had been wearing on this day of July 4th and in the early morning hours of July 5th?

A. I believe I asked him, and I believe he designated a garment or garments that he was wearing: whether I eliminated them at the address or took them to the office I do not recall.

Q. Do you recall in general what he told you he was wearing on this occasion?

A. I do not, at this time.

Q. To refresh your recollection, did he identify a brown suit, if you recall?

[fol. 1463] A. I don't recall.

Q. Do you remember a pale yellow shirt?

A. I don't recall.

Q. In any event, that examination that you made—how about the next examination that you made in the apartment?

You told us you examined certain things, some of which you took to the laboratory with you. Of what did the rest of your search in the apartment consist?

A. I found nothing that was significant there in the apartment—well, I found nothing that was significant either in the apartment or in connection with anything that I took with me to the laboratory.

Q. Now directing your attention to the ash trays which you observed in the McCauley home, did you have occasion to make any investigation respecting the defendant's home, tying in or attempting to tie in evidence with the defendant and what you observed in the ash trays in the McCauley home?

Mr. Alexander: That is objected to as incompetent, irrelevant, and immaterial, if the Court please.

The Court: I didn't follow that question. Will you read it?

(Whereupon the reporter read the question, as follows:

"Q. Now directing your attention to the ash trays which you observed in the McCauley home, did you have occasion to make any investigation respecting the defendant's home, [fol. 1464] tying in or attempting to tie in evidence with the defendant and what you observed in the ash trays in the McCauley home?")

The Court: I don't understand the question, but if you do, you may answer it.

By Mr. Armstrong:

Q. Just answer yes or no, Mr. Pinker.

A. Yes.

Q. Would you describe, please, what investigation you made?

A. I observed three burned paper match sticks on the floor in the bedroom, and there were other burned match sticks in this ash tray which you have pointed out to me.

Q. Pardon me just a moment, when you say floor of the bedroom, whose bedroom are you referring to?

A. I am speaking of the bedroom in which the crime had been committed.

Q. In the McCauley home?

A. Right. I took those burned match sticks with me, and while searching Crooker's clothing, I removed any match

packets which I found in the pockets for subsequent comparison.

Q. Do you have those match packets with you?

A. (Producing match packets and matches.)

Q. Do these match packets come from various articles of clothing worn by the defendant?

A. Yes, various articles of clothing, and I may have picked them up laying around in the apartment, too. I can't [fol. 1465] specifically remember the exact location at the present time.

Q. Do you recall if any of the match packets that came from the clothing, that had been designated by the defendant as the clothing he had worn on the previous evening?

A. I do not recall that.

Q. Can you tell us what you were looking for by examining these match packets, or what you hoped to accomplish in examining match packets and burned matches that you found in the McCauley home?

A. Sometimes it is possible, if the match stick is torn in an irregular fashion, to match that match stick back to the packet from whence it came; and that was my purpose of this comparison.

Q. So you made a comparison with the match stick that you had found with all the match packets you were able to discover in the defendant's possession, is that right?

A. That's right.

Q. What were the results of that comparison?

A. My results were negative.

Q. In additional to what you told us about the particular search at the defendant's home, did you make any other search on that occasion of July 5th, or any other examination?

A. I don't recall.

[fol. 1466] Q. Do you recall examining the automobile of the defendant?

A. Yes, I do.

Q. What type or what sort of examination did you make of the automobile of the defendant?

A. I obtained the key to Mr. Crooker's automobile from him. He told me where I would find the automobile. Captain Stilson, Mr. Alexander of the District Attorney's Office, and myself proceeded to this parking lot. We unlocked the

door and I searched for anything that might be significant, such as additional clothing, for laboratory examination.

Nothing did I find of any significance, excepting in the glove compartment there was a package which contained correspondence. About the time that we were making the search, Detective Gotch arrived and that packet was turned over to him.

Q. Then as far as the rest of the car was concerned, did you examine the car for any blood stains of any type?

A. I did.

Q. And what was the result of that search?

A. I found nothing significant.

Q. All right. Then in addition—oh, while you were in the defendant's apartment, did you observe the defendant personally?

A. I did.

[fol. 1467] Q. Did you make an examination of his person?

A. I observed his hands; I observed his face, and, as I recall, at one time I asked him to come to the kitchen and sit at the kitchen table while I examined his fingernails. Whether I removed the debris or not, I don't know. I had a pair of eye-loops with me, and I believe I examined the nails with eye-loops.

Q. What are eye-loops?

A. They are two eye magnifiers, magnifying about three and a half or four or four and a half diameters.

Q. When you say you examined, you simply examined by taking his hands in yours and looking at them through this magnifying glass?

A. That's right.

Q. Was there anything significant discovered from that examination?

A. I recall that his fingernails were clipped very closely, and they appeared to be very clean. I was unable to obtain any clippings. Whether or not I used a fingernail file to scrape them I do not recall.

Q. All right. You said you also examined his hands. Did you notice anything significant about his hands?

A. There were some injuries on, I believe, the left hand, possibly both hands. I don't recall specifically at this time.

Q. All right. Was there anything, in your opinion, based

[fol. 1468] upon your other examinations that you made of this particular matter, and based on similar examinations that you made over the years, in your experience about the injuries to his hand?

A. No, I can't say how the injuries may have happened.

Q. All right. You mentioned also you examined his face. Was there anything that was unusual about his face?

A. Yes, on his face I observed what appeared to me to be fingernail scratch or scratches, and some dig marks, like what may be caused by the penetration of the tip of a fingernail.

Q. All right. I will show you here People's Exhibit Number 22 in evidence, which is a photograph, and ask you if you recognize the subject matter of the photograph, not the photograph itself?

A. I do.

Q. And does that appear to you to be a portrayal of Mr. Crooker as he appeared on the 5th of July when you examined him?

A. It does.

Q. Directing your attention particularly to the face in the photograph, does that appear to you to be a representation of approximately what you saw, and what you just have been describing as to marks on the face?

A. It does.

Q. All right. And then, particularly the mark on the neck, [fol. 1469] which is a crescent or half moon type of a mark down here at the bottom—did that indicate anything to you that does not show—strike that out, please. Did you observe anything particular about that mark that is not readily apparent in the picture?

[fol. 1470] A. Well, I examined it quite closely, and I saw it third-dimensionally—and I also observed, in addition to the crescent-shaped mark, another linear mark underneath the left chin, and a couple of other marks around the left cheek bones which I described as resembling dig marks.

Q. As resembling what?

A. Dig marks, d-i-g.

Q. Dig?

A. Dig marks from penetration of a blunt object such as the tip of a fingernail, for example, a sharpened edge of a piece of wood.

Q. I take it from what you have already answered that it was your opinion that one of the possible causes of such a mark could have been a fingernail scratch?

A. That's right; I have seen them before.

Q. Do you mean to say by your answer that in your opinion that this type of mark would be limited to be caused by a fingernail?

A. No, I don't believe I can say that.

Q. But judging from the investigation you made in this case, and all the factors you did take into consideration, and judging from your experience and investigation of other cases, it would be your opinion that these very possibly could be fingernail marks?

A. That's right.

[fol. 1471] Q. Is that a proper summary? All right. Now, as to this mark you just told us you could see a little bit more in third dimension than you were able to observe in this picture, how much of an abrasion did this particular mark down here under the neck appear to be?

A. The skin appeared to be roughened. No skin appeared to be missing. The area about the mark where the skin had been eroded was inflamed. It didn't appear to have been a severe enough wound to me to have bled.

Q. In your observation of it at close range, weren't you able to see some evidence of scabbing—directing your attention to these particular little, what might be called cross marks—in the abrasion—didn't it appear to you then to be a certain amount of scab?

Q. No, it appeared rather to be areas where the skin had been disturbed enough or eroded enough as to cause an inflamed condition, without clotting of blood. It is the clotting of blood that causes scabbing. And I didn't observe anything that I would characterize as scabbing from blood.

Q. Then, it would be your opinion that this—would it be your opinion from your observation which you told us so far that this type of wound might not cause enough notice in the person suffering it to be aware of the fact that he had it?

A. Oh, I think when one scratches himself severely [fol. 1472] enough to cause inflammation of the wound, he would recognize the fact that he has an injury.

Q. All right. As far as this picture is concerned—well, let's turn our attention for a moment to these dig marks. You say up here in the picture you saw what you characterize as dig marks. Could you tell us a little bit more about that? Assuming, for a moment, that they were made by fingernails—I take it that was your opinion, was it not?

A. Yes.

Q. All right. Would you tell us how, in your experience and in your opinion, such marks as those would be made?

A. By the pressure, an intense pressure of a blunt, small object such as the tip of a fingernail—but, of course, the corner of a piece of wood, too, could cause something of that nature.

Q. For instance, if a person were struck a very sharp blow by the end of another person's finger, so that the fingernails came in contact with the skin, it might dig in the flesh enough to make what you would call a dig mark, is that correct?

A. That's right.

Q. All right. Now, if I may ask you a hypothetical question, Mr. Pinker, based upon your observation of what you saw here and what you characterized as dig marks, and [fol. 1473] assuming that you saw marks characterized as dig marks in a certain person, the physical characteristics of the defendant; and assuming further that such dig marks had been made by the fingernails of a woman; and assuming, further, that you had occasion to examine both the marks on the face and the fingernails of the person who had caused the marks, in your opinion would you expect to find some evidence of the fact of the collision between the fingernails and the face in your subsequent examination of the fingernails themselves?

A. No, I wouldn't expect to find anything in such a slight wound as this. Actually, fingernail scrapings don't often pay off very well, if I can use that expression. We don't often find things under fingernails that are of great value. I wouldn't expect much of skin tissue to be caught underneath the fingernails from a wound unless the wound was a very severe wound where chunks of the skin were torn away, rather than a slight microscopic abrasion, such as appears here, and was the condition on the cheek of Mr. Crooker.

Q. Now, as a matter of fact, Mr. Pinker, isn't the presence or absence of contaminating material or foreign material under fingernails determined under a microscope by examining the individual cells that can be discovered to be tissue or flesh?

A. Well, at such high magnification where the individual [fol. 1474] cells are found, you might say epithelial cells, dust-size particles, one normally expects to find, or one normally finds that to be under all fingernails. It is pieces of skin that are significant, and not the small microscopic areas, the isolated epithelial cells.

Q. I see. But if a person, to give you another hypothetical question, if a person had just scratched another person with the fingernail, wouldn't you expect to find under the particular nail that had done the scratching—— Strike that out.

We will go back a little. Examining this picture again, would it be your opinion that this mark, extending in a half-moon shape underneath the neck, and extending on up the chin, was made by one or more than one fingernail?

A. I don't know. If they had been made by one fingernail in one intermittent motion, or two separate times by the same fingernail or different fingernails. I can't say.

Q. All right. Directing your attention, then, just to the half-moon mark itself, without considering the extension of it, would it be your opinion that that mark, if made by a fingernail in fact was made by one fingernail or was made by more than one fingernail?

A. You mean this single crescent-shaped mark?

Q. The darker spot.

[fol. 1475] A. I believe that was made by just one contact one time.

Q. All right. Now, directing your attention to that situation, assuming that you found a person with an abrasion or wound such as that upon the face, and assuming, further that the mark had been made by a fingernail or a particular person, and assuming, further, that you had an opportunity to examine all ten of the fingernails of the particular person who made such a mark, would you not expect to find a greater concentration of this cell-like material or these particles of skin underneath the particular nail that

had come in contact with the flesh, than you would in the nails that have not come in contact with the flesh?

A. No, no; epithelial cells in small concentrations are common to all persons and underneath all persons' fingernails. Epithelial tissue, to be significant, it would have to be in a large piece made up of millions on millions of epithelial cells forming, actually, a small piece of skin.

Q. All right. Mr. Pinker, directing your attention to the premises of the defendant other than on the 5th of July, 1955, did you have occasion to make a further examination of the premises than what you told us you made on the 5th of July?

A. On the 6th of July Capt. Stilson and I sifted over [fol. 1476] twenty large barrels full of ashes and cans and various other debris from the incinerator at the apartment house where Mr. Crooker lived.

Q. What was your purpose, Mr. Pinker, in making this examination?

A. We were searching for a possible knife and portions of garments or clothing that had not been completely consumed by the fire.

Q. What was the result of this examination or search?

A. Well, we found nothing of great significance. This was a gas-fired incinerator of such a temperature it could melt metal. We found a lot of pieces of melted metal, found a portion of a burned shoe. I have the debris here which we saved that we recovered from the ashes. (Producing large envelope of debris.)

This is a piece of a shoe, or a part of a shoe that I referred to. There is some more material. This appears, it could have been part of another shoe. This, I believe, is a portion of a shoe. Here is a partly burned photograph that I saved. I don't know whether that has any significance or not, I don't know. I don't think I have ever shown it to anyone who can tell me whether that is a picture of the decedent in this matter. Perhaps you can.

Mr. Armstrong: It would appear not to me, but we will [fol. 1477] let other counsel examine it, too.

Mr. Alexander: He is your witness, Mr. Armstrong.

The Witness: Here is a pair of lady's earrings which escaped the heat in the fire very well. Whether or not they were thrown in the ashes afterwards and fell through the

grate I don't know. There is a portion of a man's—almost would say it is the entire man's wrist watch that was not damaged too badly by the fire. Here is a table knife. Here is a portion of a key, having been through the fire with sufficient extent where part of it was melted away.

Q. Pardon me, just a moment. Were you able to determine the metal of which this key is composed?

A. No, I made no effort to.

Q. Are you able, just by general observation, to determine what that metal is?

A. It is an alloy of some kind, of some description. What it may be, I don't know. It is not an iron key; it is not a steel key. It is possibly brass or a casting, die-cast metal, something of that nature. There is a one-cent coin. There is part of a key chain.

Q. Directing your attention to this piece of key chain, does that appear to you to have been through this fire that you told us about?

A. It does. And here are three zipper locks. I consider what we found insignificant with the possible exception of [fol. 1478] the shoes, or portion of the shoe. But I don't know whose shoe it is. The only thing I can be sure of is it is not my shoe.

Q. All right, Mr. Pinker, I take it from this small zipper lock that we have here, that the sieve or screen through which you were pouring all these barrels of ashes was fairly fine, is that right?

A. The screen that we were using, the mesh was about a quarter of an inch, as I recall.

Q. Now, as to these—I take it that these are all of the recoverable items of any significance that you found in the fire, is that right?

A. Yes, found in the ashes. I still don't consider that of much significance.

Q. Well, now, I wonder if you observed and did not save any other zippers, in addition to these little zipper locks you brought in here?

A. As I recall, there were some teeth, what appeared to be zipper; and, of course, as zippers are constructed, these teeth grip into the fabric, and when the fabric burns then the teeth become isolated, and they are so tiny that they will go through a quarter-inch screen.

[fol. 1479] Q. That is why, in your opinion, you recovered the zipper locks but not the zippers, themselves, is that right?

A. That's right.

Mr. Armstrong: May I mark these three zipper locks as Defendant's Exhibit next in order?

The Court: They may be marked Defendant's Exhibit Q for identification.

Mr. Armstrong: Defendant's Exhibit Q for identification —now, on the basis of the identifying testimony of this witness, may I move that these be received into evidence?

Mr. Alexander: Objected to, if the Court please, at this time, because no proper foundation has been laid.

The Court: Objection sustained.

Mr. Armstrong: All right, just for identification.

Q. Now these barrels that you examined, what information did you have respecting the barrels?

Mr. Alexander: That is objected to as calling for hearsay, if the Court please. This is this counsel's own witness.

The Court: Sustained.

By Mr. Armstrong:

Q. You tell us that you examined the barrels of ashes that you found adjacent to the defendant's apartment, is that right?

A. Out in the alleyway.

Q. About how many of those were there?

[fol. 1480] A. There were over twenty. I don't recall exactly the exact number. There were over twenty very large barrels, larger than the largest garbage can. There were some large garbage cans, too, which contained ashes and tin cans and broken glass and bottles.

Q. Did you examine all of these containers of refuse of every kind and description that you saw out there in the alley adjacent to the apartment house?

A. Yes, we sorted out the cans. Threw the cans to one side, and with a shovel scooped the ashes into the sieve. And before we had received the sieve we put the ashes on the concrete driveway; that is, the allyway, and with a stick went through the ashes.

Q. Directing your attention to this knife that you recovered from these premises, does that appear to you, from your examination of it now and what you saw at the scene, to have gone through the fire or furnace that you saw there?

A. I don't think that it did. It was just in among the ashes. It could, of course, have fallen down from the chute, down through the grate, and laid in the cold ashes at the bottom while the fire burned above without damaging it.

Q. Directing your attention to this portion of a wrist watch, does that appear to you to have been through the furnace heat?

[fol. 1481] A. Some of it has been through fire, but not the intense heat. There was a lot of molten melted metal that had gone through high heat.

Q. Just for the record, Mr. Pinker, will you tell us how many match cartons there were here of which you made an examination? You told us a little while ago——

A. There are eight.

Q. That is all the questions I have. Thank you.

A. Do you want——

Q. I'm sorry, was there an answer to the last question—there are eight?

A. Eight.

The Court: Cross examine.

Mr. Alexander: Are you through?

Mr. Armstrong: Yes.

Cross examination.

By Mr. McCurdy:

Q. Mr. Pinker, directing your attention to the home at 1100 Somera Road and the time you were there on Tuesday, July 5th of this year, I believe you testified on direct examination that you saw blood on the chaise lounge and blood on the drapes?

A. Yes.

Q. Did you make any examination with respect to determining the type or the classification, or did you attempt to classify the blood that you found anywhere within that [fol. 1482] room?

A. No, I did not.

Q. Will you tell us the reason why you did not do that?

A. Because all of the blood was in the immediate area of where the victim had met her death. There was no indication of blood anywhere else. There were no trails of blood leading away from the chaise lounge, or no trails leading to the bathroom, or over the carpet of the bedroom. Nor were there any drops of blood around the floor immediately in front of the chaise lounge.

All of the blood that I observed had the appearance of it being associated together. Therefore, I took no samples of the blood grouping.

Q. In your opinion, how could the blood get on the drapes?

A. By the body being—some portion of the body striking the cushion or a pillow which is alongside that had blood absorbed into it, and in striking it the blood just squooshed out and splashed like a sponge would if it were saturated with blood and being struck by the hand.

Q. There was no trail of blood leading away from the chaise lounge and the drapes?

A. No, the blood was isolated around the chaise lounge and on the chaise lounge and on the drapes behind the chaise lounge, and, of course, the body was very bloody.

Q. Now Mr. Pinker, I call you attention to People's Ex-
[fol. 1483] hibit Number 22 in evidence. Now directing your attention to that photograph, particularly with reference to the wounded area you find on the left neck as shown on that picture. You examined that portion or that area of the defendant's neck in the apartment on Marathon on the afternoon of July 5th of this year?

A. I did.

Q. That is the portion shown on that picture?

A. I did.

Q. Now directing your attention to that injury on the neck, is that the type of injury you would expect that the fingernail, if it was a fingernail that inflicted it, would have skin underneath it?

A. No.

Q. Why do you say that, sir?

A. Because there was no skin missing from the wound in the first instance. Secondly, if enough skin does come

from a wound, it doesn't follow that that skin of necessity remains underneath the fingernail.

Q. Explain that last portion of your answer, please, sir.

A. I say it doesn't follow if the fingernail does remove skin and cause a wound, that of necessity will that piece of skin remain underneath the fingernail. It can drop away, as an example.

Q. While you were there at the apartment that afternoon, [fol. 1484] that is the apartment of the defendant, did you talk to him with respect to the wound on his hands and the wound upon his neck?

A. Yes, I asked him how he sustained the injuries to his hand.

Q. What did he tell you, sir?

A. He said that he had been in an automobile accident where his bumper had collided and locked with the bumper of another vehicle—I believe it was on the Pacific Palisades Road or highway; and that he had sustained the injury as a result of unlocking the bumpers.

I asked him if he had saved the driver's license—taken the driver's license or the license of the vehicle that he had the collision with. He said he had not.

I asked him how he got the marks on his face. He said that he didn't know that he had any marks on his face.

Q. Who was present in the apartment at the time that you had this conversation with the defendant?

A. Is I recall, sir, Chief Deputy District Attorney Adolph Alexander was there, Lt. Gotch was there, Captain Stilson as well, and Mr. Stambler. Where they were, respecting where I was when I questioned the defendant I do not know; but I believe Mr. Alexander was there and heard my conversation with him.

Q. Well, Mr. Pinker, let me ask you this question; sup- [fol. 1485] pose a person had blood under the nails of his hand, and he took a shower, clipped his nails and cleaned his fingernails. By doing that do you feel—if that had taken place prior to the time you examined the defendant's nails on the 5th of July of this year, that you would find any evidence of blood?

A. No, I don't believe that I would. And, further, there were injuries on the hand, and supposing I had found blood.

What would it mean? I wouldn't be able to tell whose blood it was.

Q. In other words, if you had found blood underneath the defendant's nails on July 5th, you wouldn't know if it was his blood or somebody else's?

A. No, because there would be insufficient amount for blood grouping purposes. About all we ever find under the fingernails of a hand that has been only superficially washed, where the nails haven't been clipped, is just sufficient blood to get a positive Benzidine test. Seldom enough to determine whether or not it is human, let alone a blood grouping test, which requires much more blood.

Q. You used the term "Benzidine test". Would you tell us what that is, sir?

A. The Benzidine test is a presumptive test for blood. It is a chemical test and has a sensitivity of about one part—the sensitivity is such that one part of blood diluted 300,000 times would give a positive reaction.

[fol. 1486] Here was a situation with wounds on a hand that appeared as though they could have bled. Those hands washed in water would cause a Benzidine reaction to be present. Consequently I performed no such test, not being able to differentiate in the final analysis where the blood had come from.

Q. Now Mr. Pinker, you were asked on direct examination some questions relative to some matches and some match sticks that you attempted to match, is that right, sir?

A. That's right.

Q. Now directing your attention to that subject, I believe you said you obtained negative results when you attempted to tie the match sticks to the match folder, isn't that right?

A. That's right.

Q. Will you explain what you mean by negative results in that connection?

A. I wasn't able to tie in any of the match sticks which I had taken from the McCauley home to the match packets which I found in the possession of the defendant Crooker.

Q. Why not?

A. Because the match packets——

Mr. Armstrong: Just a moment, I believe that is an improper question, your Honor.

The Court: Objection sustained. It calls for a conclusion.

[fol. 1487] By Mr. McCurdy:

Q. Will you explain to us what you did in an endeavor to tie the two together?

A. I disassembled some of the match packets, and those which I disassembled are in the envelopes; removing the front and the back sections in order that I could under the microscope hold the ends of the burned matches alongside of the torn areas to find out if there was any area there where I could find a matching, thus proving that that particular match had been torn out of that particular match packet at [fol. 1488] that point. The colors of the matchsticks were such that I disassembled four of them here. The matchsticks did match as far as shape and color were concerned, but I was unable to tie any of the burned matches from the McCauley home into any of the packets which I found in the Crooker residence.

Q. You, of course, do not know how the matches you got at the McCauley home came there?

A. No, I do not, no.

Mr. McCurdy: No further cross examination.

Re-direct examination.

By Mr. Armstrong:

Q. Mr. Pinker, did you notice in your examination of the McCauley home the wounds on the decedent?

A. No, I did not at that time. The decedent was very bloody. I attended the autopsy—attempted to attend the autopsy the following morning to find out what the nature of any traumatic injuries were in order that we could proceed from there.

Q. But as a matter of fact you didn't attend that, is that right?

A. I went there to attend and was sent out immediately to sift the ashes because we had information that that was the day for the ash collector to arrive and remove the ashes.

Q. From your examination of the premises and the condi- [fol. 1489] tion in which you observed the body of the decedent, and the condition that you saw in the room, the bedroom of the McCauley home, and based on your experi-

ence in making similar investigations and examinations in the past, would you have an opinion as to whether or not these conditions indicated evidence of a struggle?

A. No, I don't think much of a struggle is indicated by virtue of the fact that the blood was confined to this area on and immediately around the chaise lounge. Had there been a struggle I would have expected to find blood all over the bedroom and possibly leading into other rooms.

Q. So that your answer would be that as far as the area is concerned, that is the struggle being outside of the vicinity of the chaise lounge, you would not find evidence of a struggle?

A. No, everything happened on the chaise lounge.

Q. I see——

A. Which indicates if there was a struggle it was of a minor nature.

Q. Did you happen to notice the hands and arms of the victim as to particular wounds that were inflicted thereon?

A. No, I didn't get a good opportunity at the time because of the amount of blood that was on the body. I had intended to see that the following morning, but didn't ever get to see it after the body was washed.

[fol. 1490] Mr. Armstrong: Thank you. That is all.

A. What should I do with this junk, take it back with me?

Mr. Armstrong: I will accept the junk that has been marked in evidence or for identification.

The Witness: Have you everything that has been marked?

Mr. Armstrong: Yes, I have.

The Court: Anything further of this witness?

Mr. McCurdy: No, your Honor.

Mr. Armstrong: May I inquire of the Court whether the fingernail clippings were received for identification?

The Court: Just for identification.

(Colloquy between Mr. Armstrong and Mr. Alexander outside of the hearing of the reporter and jury.)

Mr. Armstrong: By virtue of a stipulation, Defendant's Exhibit P, the fingernail clippings, may be received in evidence, is that right?

Mr. Alexander: Yes.

The Court: Very well, be received as Defendant's Exhibit P in evidence.

Ladies and gentlemen of the jury, do not discuss the case among yourselves nor talk to anyone about it, nor allow anyone to talk to you about it. Do not form nor express any opinions or conclusions about the case until the matter is finally submitted to you.

[fol. 1491] We will take up again at 9:30 tomorrow morning.

(Whereupon the aforementioned trial adjourned at 4:47 o'clock p.m., Monday, December 5, 1955, to resume at 9:30 o'clock a.m., Tuesday, December 6, 1955.)

[fol. 1492]

Santa Monica, California,
Tuesday, December 6, 1955

9:30 o'clock a.m.

The Court: The jury is now present. Your next witness, Mr. Armstrong.

Mr. Armstrong: At the close of yesterday's session Mr. Alexander indicated the People would stipulate with the defendant—he didn't phrase the stipulation—but to the effect that the trash that was examined by Mr. Pinker and Capt. Stilson was all of the trash that had been removed from the furnace of this apartment house from a day prior to July 4th, is that correct?

Mr. Alexander: I will stipulate that the trash brought here by Mr. Pinker was the trash that he removed, and it wa- not before July 4th, I believe he testified that occurred on July 6th.

Mr. Armstrong: Pardon me just a moment.

(Inaudible conference between attorneys.)

Mr. Armstrong: The stipulation is that the People would stipulate that the trash that was examined by Mr. Pinker and Capt. Stilson on the 6th of July was all of the residue that had been removed from the furnace for one week prior to the date of the examination, and that if the landlord of the apartment house were called he would so testify, that the barrels of trash that were examined were all of the trash for one week's accumulation prior to July 6th.

[fol. 1493] Mr. Alexander: That is satisfactory.

The Court: Very well. Your next witness.
Mr. Armstrong: The defense will call George Lacy.

GEORGE W. LACY, called as a witness in behalf of the defendant, having been first duly sworn, was examined and testified as follows:

The Clerk: Be seated and state your name.
The Witness: George W. Lacy.

Direct examination.

By Mr. Armstrong:

Q. Mr. Lacy, what is your business or occupation?
A. I am head chemist in charge of the Los Angeles County Sheriff's Department, Criminology Laboratory.
Q. And how long have you been so employed?
A. A little over seven years.

Mr. Alexander: If your Honor please, we know the qualifications of Mr. Lacy, and Mr. Lacy, we will stipulate, is well qualified as an expert, as a forensic chemist.
Mr. Armstrong: Thank you.
Mr. Alexander: Is that what you want?
Mr. Armstrong: Because of the nature of his testimony I would like to have the jury have the benefit of his qualifications, but I thank you for the stipulation.
[fol. 1494] Q. Tell us what your experience has been in this particular line of work.

A. In this particular laboratory?
Q. Yes.
A. In this particular laboratory my experience has been the examination of any type of evidence in connection with the investigation of a criminal case. That includes organic chemical examinations, physical examinations and physical comparisons.
[fol. 1495] Q. You are, yourself, a chemist?
A. Yes, I am.
Q. Could you give us some of your personal background?
A. I have a degree in chemistry, obtaining that degree in 1933. Since that time I have been employed as a chemist.

Since 1940 I have been employed as what is known as a forensic chemist. I have qualified and testified in courts of several States of the southwest.

Q. Now Mr. Lacy, among other work that you have done, have you had occasion to make examinations of human blood in connection with criminal cases?

A. Yes, I have.

Q. And have you had occasion to examine the scenes where crimes have been alleged to have been committed?

A. Yes, I have.

Q. And have you had occasion to make examinations of the bodies of victims of crimes, particularly homicides?

A. Yes, I have.

Q. And included in your investigations, have you had occasion to make examinations of fingernails of victims?

A. Yes, sir.

Q. Mr. Lacy, I will show you here what has been marked Defendant's P in evidence, which are the fingernail clippings of the victim in this case. They are contained in these two envelopes. The one you have in front of you on the left hand, and the other envelope on the right hand, and, [fol. 1496] for your information, it has been testified in this matter that these fingernails were clipped from the nails of the decedent at the time an autopsy was performed.

Now Mr. Lacy, I will ask you further to examine, as a part of People's 22 in evidence, which purports to be a photograph of the defendant in this particular case, and I will ask you particularly to direct your attention to the mark—the crescent shaped mark that appears on the neck of the subject in the photograph, and to examine the detail thereof (showing same to witness).

(Witness examines same.)

Q. Mr. Lacy, from your examination of that particular photograph, and from your experience in the investigation of crimes, are you able to express any opinion as to the nature or type of mark that you see, particularly directing your attention to the crescent shaped mark on the neck?

A. This is a photograph. It is not like examining the original situation. It does appear that it might be an abrasion. It could be the results of a possible scratch.

Q. Now Mr. Lacy, if I may ask a hypothetical question of you. Assuming that the photograph before you is a true representation of the subject at the time the photograph was taken, and assume further that the mark which your attention has been directed to was caused by a fingernail scratch, and assuming further that the fingernails of the person who made the scratch were the length and size of the [fol. 1497] fingernails that you have before you in Defendant's Exhibit P, in such a situation, on the basis of those assumptions, if you were to examine the fingernails of the decedent within a twenty-four hour period of the time that the scratch was inflicted on the subject, would you expect to find evidence linking the subject with the fingernails of the victim?

A. May I ask one question?

Q. Yes.

A. Did this hypothetical situation assume that the fingernail scrappings were taken prior to or after the autopsy?

Q. The hypothetical situation is assuming that the fingernail scrappings were taken subsequent to the autopsy, the fingernails, themselves, were removed at the time of the autopsy.

A. At the time of the autopsy?

Q. Yes.

A. The autopsy was made at the Los Angeles County Morgue?

Q. That's right.

A. Under those circumstances, not necessarily would I expect to find flesh, for this reason: the practice in the Los Angeles Morgue, as I am familiar with it, is that the body is generally washed and cleaned up before the autopsy is made, and it is possible that the hands could have been washed.

[fol. 1498] Q. All right, then, Mr. Lacy, I am going to pose the same hypothetical question to you, and the same assumed facts, and assuming, for the purposes of your answers that the persons performing the autopsy had been informed that the fingernails were desired for the purposes of this examination, and that the body had not, in fact, been washed, so that the fingernails were untouched as far as their change from the scene of the crime was concerned; what, under those circumstances, would your answer be?

Mr. Alexander: That is assuming facts not in evidence, your Honor. We object to it.

The Court: Objection sustained.

By Mr. Armstrong:

Q. Mr. Lacy, if I may repeat the original hypothetical question to you and ask you to reframe something; assuming that the body had previously not been washed, since that fact is not in evidence, would your answer on the basis of the hypothetical facts which I furnished you, without adding that assumption, what would your answer then be?

Mr. Alexander: Just a moment. Again, assuming facts not in evidence, contrary to the testimony of Mr. Pinker who, when questioned about the condition of the body, said that the body was very bloody and he was waiting until the body would be cleaned up, and that when he went to the County Morgue he immediately was called out to examine [fol. 1499] the ashes. No testimony that the body was not washed.

Mr. Armstrong: If I may be heard on the same point, your Honor, Mr. Pinker further testified that prior to the autopsy being made, that he had informed Dr. Newbarr of the nature of the——

The Court: Call my attention to the page and line that you have reference to, please.

Mr. Armstrong: Yes, your Honor; I haven't gone over yesterday's transcript.

Mr. Alexander: There is some evidence on the bottom of Page 1457, if the Court please.

Mr. Armstrong: My point, your Honor, I believe is on Page 1458, Line 6.

The Court: The objection is sustained.

Mr. Armstrong: Your Honor——

The Court: Counsel, I have ruled on the objection of the People.

Mr. Armstrong: May I make an offer of proof for the record?

The Court: Approach the bench.

[fol. 1500] (The following proceedings were had at the bench, outside the hearing of the jury):

Mr. Armstrong: Your Honor, the anticipated——.

The Court: Make your offer of proof, please.

Mr. Armstrong: My offer of proof, your Honor, is that the answer of the witness would indicate that under the circumstances, only the circumstances in evidence in this trial, under those circumstances that there would be evidence underneath the fingernails.

The Court: Counsel, your question already anticipates and contains elements that are not in evidence, therefore, your proposed offer of proof is clearly invalid. Your offer of proof respects an answer to a question that has not been asked.

Mr. Armstrong: My question is, assuming that the subject is as represented in the picture. Assuming that a scratch was caused by fingernails. Assuming that it was caused by fingernails that were examined here. That the fingernails were of the size and shape examined here. Would the witness expect to find evidence of the scratch by examination of the fingernails? Now we do not have in evidence—the objection is that I am assuming facts not in evidence. Yet the district attorney is asking me to assume additional fact which is not in evidence.

The Court: Just a moment. As your question is framed, the witness could assume—you are asking the witness could [fol. 1501] an examination of the fingernails made after the original incident—you are not stating a time element, and certainly that is not in evidence. You must have a time element.

Mr. Armstrong: No, your Honor.

The Court: You are not maintaining that these fingernails were examined five minutes after the scratch was inflicted.

Mr. Armstrong: If I put in an additional qualification that the fingernails were examined within forty hours, clearly covering from the time of death until the time of the autopsy and some overtime, to be on the side of safety, including that ingredient; assuming an examination was made forty hours later, and particularly calling the Court's attention to Page 1460 where the witness testified that he examined these things under a microscope and said the blood was meaningless because the hands and the body were

quite bloody; further call the Court's attention to the exhibits before this witness are blood stained, which would indicate further there has been no washing. Mr. Pinker testified he took all these facts into consideration and there is no evidence before the Court—and I am being asked to assume a fact not in evidence, that the body had been, in fact, washed.

The Court: If you put in the time element, it will be satisfactory.

[fol. 1502] (Proceedings resumed in open court before the jury.)

By Mr. Armstrong:

Q. If I may strike the pending question for the purpose of rephrasing it——

Mr. Lacy, assuming, in your hypothetical situation, only these facts: assuming that the picture that you had before you is an accurate reproduction of the subject of the picture. Assuming that the crescent-shaped mark on the under side of the chin is in fact a scratch mark. Assuming the scratch mark was made by fingernails. Assuming that the scratch mark was made by a fingernail of the size and type of the fingernail that you had before you in Defendant's Exhibit P in evidence, and assuming, further, that you made an examination of the fingernails within forty hours of the time of the contact between the skin of the subject and the fingernails of the decedent——

With all of those facts and conditions in mind, would you, in such an examination, expect to find evidence of the contact between the nails of the decedent and the skin of the subject in your examination of the fingernails made at such a time?

A. It is possible, due to the fact that some of these marks appear to be what we might call gouge marks; that is, the upper marks, down in the crescent-shape; the marks in the portion toward the back of the neck appears to be the result of a slight cutting motion, such as the fingernail might have [fol. 1503] traveled not in a straight motion but in a cutting motion. Then, as it changed in force turned from the downward motion towards the chin. There is a little abrasion

which indicates scratching there. There are two very small areas which indicate a possible removal of a very slight area of the flesh. It is possible that flesh might have been found under the fingernails, and then, again, I wouldn't want to say it would be found under the fingernails. It is a possibility.

Now, Mr. Lacy, I would ask you to examine Defendant's A in evidence in this case, which, for your information, is a picture that purports to be a representation of the bedroom of the deceased. The decedent is lying across the chaise lounge, and these are drapes in the background (indicating), and this photograph purports to have been taken at the scene within a matter of hours—we don't know how many hours—after the death—after the time of death.

Further, there has been testimony in this case that what appear to be stains on the drapes here (indicating) are, in fact, blood stains.

Now, assuming that the decedent in this particular scene that you have before you had suffered wounds of such a nature that there would have been no arterial bleeding, no spurting from any wounds, and assuming, further, that the decedent was—at the time the wounds were inflicted in the [fol. 1504] chest and arm and hand of the decedent—the decendent was in a prone or a semi-reclining position on the chaise lounge that you have pictured there before you, under those circumstances and assuming those things, would your opinion be—based on your experience in the examination of scenes of crimes in the past, that these blood stains indicated on the drapes in Defendant's A in evidence, would be the blood of the decedent person under those circumstances?

Mr. Alexander: Just a moment, if the Court please. This witness has not been given all the facts as to the quantity of blood that was present there at the time——

Mr. Armstrong: I am sorry.

Mr. Alexander: —the objects, the thrashing and struggling.

The Court: Objection sustained.

Mr. Armstrong: There is no evidence of thrashing and struggling. There is evidence of quantity of blood, if I may add that ingredient.

The Court: The objection is sustained.

By Mr. Armstrong:

Q. May I add—if you will bear in mind the facts of the last question, and add to the question the fact that the victim further did a large amount of bleeding and that the chaise lounge upon which the body is resting had a large quantity of blood on the plain surfaces of the chaise lounge, and that you may assume that the cushion upon which the body is [fol. 1505] resting was saturated with blood.

With all of those facts before you, are you able to express an opinion as to whether or not the blood that you see in the drapes as portrayed in that picture would be the blood of the decedent?

A. I understood in the question that the deceased had not been on her feet, is that correct?

Q. Well, for the purposes of this question, we have to assume that she was either reclining or in a semi-prone position on the chaise lounge.

A. Under such a situation, if that was the blood of the deceased, I would think it would be the results of rubbing from one object to another—from a bloody object onto the drapes, or it would have to be the results of flying blood, splashing blood. The only way you could say—that you might say it was the deceased's blood is to determine the blood types and see if it is the same.

Q. First, is it possible, by an examination of a piece of material upon which there is a blood stain, the size and apparent amount of blood as you see portrayed there in the picture, to make a blood typing from such a sample?

A. Do you have any testimony as to the material of the drapes?

Q. I don't—simply that they were a coarse material. As to the actual material, wool, cotton, rayon, and so forth, I [fol. 1506] don't believe we do.

A. The quantity of blood present appears to be more than sufficient to determine the type, provided the drapes were not made out of a rayon with a cheap dye. If it is rayon with a cheap dye, there will probably be trouble. It is very difficult to type it under that instance.

Q. But if it is other material than that, it would be possible to type it?

A. If it is a material such as wool, cotton, nylon, yes, I see no difficulty in determining the type.

Mr. Armstrong: All right. Thank you, Mr. Lacy. You may cross examine.

Cross-examination.

By Mr. McCurdy:

Q. Mr. Lacy, referring to the photograph before you, People's 22 in evidence, that is the colored photograph there, did you, on July 5th of this year, or at any other time, see the person shown in that photograph?

A. No, I did not.

Q. In other words, you never personally examined the marks appearing upon the neck of the person shown in that picture, People's 22?

A. No.

Q. Now, I believe you testified on direct examination that [fol. 1507] you wouldn't want to say that flesh would be found under the fingernails, is that correct?

A. Yes.

Q. Now, if we assume that there was no skin—that is, no flesh gouged off the subject of that photograph, People's 22, then you would not expect to find flesh underneath the fingernails of the party that may have made contact, is that right?

A. In this instance, yes, but I better clarify that. I would not expect to find flesh from this particular individual in that location, assuming that there is no flesh gouged off, as I understood it.

Q. That is the assumption I was asking you to find out. In other words, if there was no flesh gouged off, you wouldn't expect to find it under her fingernails that might have inflicted that injury?

A. That is correct.

Q. With respect to the drapes which are shown in that other photograph before you, I believe you said that you could—the blood, or the substance that resembles blood on those drapes could get there as a result of rubbing, is that correct?

A. I am assuming—because I don't have a picture clear enough to know the nature of the blood on the stains. I am

only figuring possible ways in which blood could be deposited on the drapes. That was one of my statements.

[fol. 1508] Q. You did not go out to the location of that picture on the 5th or the 6th of July of this year?

A. I did not.

Q. In other words, you have never been out to the house at 1100 Somera Road in the Bel Air district?

A. No, I have not.

Q. I believe you said that there was one other way in which blood might get upon those drapes, and I think you said flying blood. Did I understand you correctly?

A. Yes.

Q. What do you mean by "flying blood"?

A. I mean by that, blood which has deposited on an object, a bloody object, and flying through the air until it strikes the drapes. For instance, let's say an object saturated with blood may be moved hurriedly, and by the centrifugal force created the blood will leave the object and splash onto the drapes.

Q. In your opinion, would a knife that is plunged into a person and pulled out with force, and put back in, do you think that there would be sufficient centrifugal force to cause blood to fly from that object, such as a knife?

A. Not in that quantity from that distance, no, I don't think so.

Q. Mr. Lacy, you do not know, of your own knowledge, how the blood got upon those drapes?

[fol. 1509] A. No, I do not.

Q. Mr. Lacy, what do you mean by the term blood typing?

A. That is to determine the group—the general group to which a blood belongs, either group A, group B, group A-B, or group O.

Q. In other words, the blood of different individuals falls into certain definite groupings, and you have given us the names or designations of those groups, is that right?

A. That is correct.

Q. So if you did type blood, you could determine the bodily type to which that blood belongs?

A. That is correct.

Q. But you, of course, would not be able to testify as to whose blood it was?

A. No. I would only be able to testify that it is the same type as the victim's blood, or it isn't the same type as the victim's blood.

Q. Is some particular blood typing or blood grouping more common than the other?

A. Yes.

Q. What one is that?

A. O.

Q. Type O?

A. Yes.

[fol. 1510] Q. About what percentage of the population has Type O blood?

A. Oh, that is a rough estimation, close to 40 per cent, 42 per cent.

Mr. McCurdy: No further questions.

[fol. 1511] Re-direct examination.

By Mr. Armstrong:

Q. Mr. Lacy, I will ask you to examine People's 14 and People's 12 in evidence, being two additional photographs of the same scene, which don't cover quite the scope of Defendant's A, but are close-ups and show what has been identified as blood on the drapes in a somewhat closer range, and ask you, with this additional evidence before you, if you are able to express any further opinion as to the causation of the blood on the drapes (showing same to witness)?

A. (Examining same.) Yes, I think I could.

Q. And with all three exhibits being considered the basis of your answer, what would your opinion now be?

A. Yes.

Q. I am sorry. What would your opinion be?

A. Did you ask me my opinion?

Q. Yes.

A. I misunderstood you. With the additional pictures I see more spots of blood—more spots which exhibit A did not show, which makes it appear that the line of the spots are in a semi-circle. In other words, they are crossing the pillow, in back of the chaise lounge, and they hit up on the drapes, which would indicate to me that that is the results of movement, some type of movement, which I would say

is probably a pretty violent or pretty quick movement [fol. 1512] causing blood to fly, possibly with the turning motion. It is practically a line.

Q. In other words, in your opinion, Mr. Lacy, would the blood that you observed there, and the opinion that you have just expressed, coupled with your experience in investigating crimes in your work, indicate to you that the blood stains that you see on the drapes are evidence of a struggle?

A. It could be the evidence of a struggle, or it could be the results of a person having considerable blood on his hands, on an object, something like that, and turning rapidly, or the results of a struggle, the victim turning rapidly.

I wouldn't attempt to say just what it came from, but it does appear to be the results of rapid movement.

Q. All right. Then Mr. Lacy, directing your attention once again to Exhibit A, in your opinion, with the other exhibits that you have just examined, may I ask you if, in your opinion, the blood stains on the drapes—the fartherest blood stains on the drapes in Exhibit A—appears to you by comparison with the other photographs to be part of the same pattern that you have just explained to us in this turning movement?

A. No, I don't think so.

Mr. Armstrong: Thank you, you may cross examine.

Mr. McCurdy: No further questions.

[fol. 1513] Mr. Armstrong: Thank you, Mr. Lacy. May this witness be excused?

The Court: Yes, you are excused.

(Witness excused.)

The Court: Your next witness?

Mr. Armstrong: Dr. Hoefer.

HAROLD F. HOEFER, called as a witness by and on behalf of the Defendant, after being duly sworn, was examined and testified as follows:

The Clerk: Be seated, please, and state your name.
The Witness: Harold F. Hoefer.
The Clerk: Spell your last name.
The Witness: H-o-e-f-e-r.

Direct examination.

By Mr. Armstrong:

Q. Doctor, you are a doctor of medicine, is that right?
A. Yes, sir.
Q. And what is your degree in medicine?
A. M.D.
Q. And would you tell us where you received your medical training?
A. At Nebraska and Columbia in New York.
Q. And are you licensed to practice medicine in the State of California?
[fol. 1514] A. Yes, sir.
Q. And were you so licensed to practice medicine in the early part of July of this year?
A. Yes, sir.
Q. Now directing your attention to that time, did you have occasion, during the month of July, 1955, to examine any part of the person of the defendant here, John Crooker?
A. Not in July.
Q. When was this examination made?
A. It was August 8th.
Q. August 8th?
A. Yes, sir.
Q. And at the time you made this examination, of what did your examination consist?
A. An examination of the scars of his skin.
Q. And where were the scars located that you examined on August 6th of this year?

Mr. Alexander: August 8th, wasn't that?

Q. I am sorry.
A. August 8th.

Q. August 8th of this year, all right.

A. On the ring and small finger of the left hand.

Q. The ring finger and the small finger of the left hand, is that right?

A. Yes, sir.

[fol. 1515] Q. And what did you observe in your examination of this portion of the defendant?

A. The types of scars? The scars that I observed?

Q. Yes.

A. I observed scars on the ring finger, on the first phalanx. That is, the base of the finger, on the medial side, and a linear scar, oblique linear scar on the first joint of the ring finger, which had a direction to the lateral side. To explain that, instead of the scar running this way (indicating), it ran this way (indicating).

I observed another scar at the side about the last joint and just inferior—just below the last joint of the index finger, and I observed a transverse scar—that is, a scar going across on the—in the fold of the first and second phalanx. That is at this point right here (indicating), and I observed a scar on the small finger on the top. That would be on the lateral side, and I observed several small pitted scars that were slightly depressed scars.

Q. Doctor, I direct your attention to People's Exhibit Number 22 in evidence, which purports to be a photograph of the defendant, and directing your attention to the left hand that appears in the photograph, may I ask you if the scars that you observed—the marks that you observed, abrasions or marks of any kind, were in the fingers of that particular photograph?

[fol. 1516] A. They were at these sites, yes, except the one on the flexural side, on the front of the finger.

Q. Which is not visible in this photograph?

A. Not visible in the photograph.

Q. Doctor, from your examination of the scars which you saw on August 8, 1955, were you able to form an opinion as to the nature of the wound or wounds that had caused the scars that you observed at that time?

A. The impression that I formed from the location of the wounds and the—may I ask you a question?

Q. Yes.

A. In what manner do you mean were the wounds—there were wounds there—are you asking me how the wounds got there?

Q. I asked you if you are able to determine, just answer yes or no; are you able to determine?

A. No.

Q. All right, Doctor, directing your attention to the examination that you made of the defendant's hands on August 8, 1955, and assuming for the purposes of this answer that this photograph was taken of the defendant on the 5th of July of 1955, and assuming further that the scars that you observed were the residual marks—or the marks that you observed were the residual marks that you observed on this photograph before you, and assuming further that the marks that are there before you were reflected [fol. 1517] within a period of two days prior to the time that that particular photograph was made. Then, sir, with all of those facts in mind, your examination and this examination of the photograph, with those facts in mind are you able to express an opinion as to the nature of the wound—the nature of the occasion that caused the wound you see?

A. No, sir, I couldn't form an opinion of what caused the wound.

Q. Doctor, are you able from the examination you made August 8, 1955, together with the photograph before you, and assuming that the marks that you see in the photograph were reflected within two days of the photograph, and assuming further the photograph was made on the 5th of July, taken in conjunction with your examination of August 8th, are you able to express an opinion as to whether or not the marks we see there in the photograph, and that you saw on examining the scars of the defendant's hands were made as a result of human bite marks?

A. I don't believe they were made of human bite marks, it was my impression from the type, the contour of the scars, and the location of the scars.

Mr. Armstrong: Thank you. That's all.

[fol. 1518] Cross examination.

By Mr. Alexander:

Q. Did you make an examination of this defendant at anybody's request?

A. Yes, I did.

Q. At whose request?

A. Mrs. Root.

Q. Who is Mrs. Root?

A. An attorney.

Q. She was the defendant's lawyer at that time?

A. I believe so.

Q. When was the request made of you, Doctor?

A. Perhaps a week or ten days before I examined the patient.

Q. Doctor, did you, in examining the patient, did you not see him also sometime in July?

A. No, sir.

Q. At the County Jail?

A. No, sir.

Q. You saw him just once, August 8th?

A. Yes, sir.

Q. You waited about a week or ten days after the request was made of you to make the examination, is that right, Doctor?

A. Yes, sir.

Q. Doctor, had you made the examination of this defend-
[fol. 1519] ant at an earlier period would you have been able to form a more definite opinion as to how the injuries were inflicted?

A. Well, that I couldn't say. I couldn't answer that. That I don't know.

Q. Doctor, you told us of an injury on the underneath surface of one of the fingers, and you told us of injuries to the upper surface?

A. Yes, sir.

Q. Could they have been caused by pressure from underneath and from the top?

A. It couldn't, so far as I am able to determine, from a bite. I am not able to understand how a bite could produce a transverse scar on the palmar side of the finger, and the

type of scars, in contrast to the type of scars that were on top of the fingers.

Q. How about two bites?

A. I would say it was almost impossible, as I have tried to demonstrate myself and have had others try to bite on a transverse bite on the flexural side of the side of the ring finger in that site.

Q. Doctor, would you hold that finger up so that the jury might see?

A. My finger—right here.

Q. Can the jury see that, just about where you have a mark on your finger?

[fol. 1520] A. Yes, sir.

Q. You placed that mark there, Doctor?

A. I did, I placed it there today.

Q. Before you came here to court?

A. Yes, sir.

Q. That was for the purpose of illustrating where the injury was?

A. Yes, sir.

Q. That is across that first joint?

A. That is right.

Q. That was a depression right across the finger?

A. It was a pigmentary, red, a brownish pigment at the time I saw it, and it was transverse across this way.

Q. And you cannot imagine how teeth could cause that mark in that manner, Doctor?

A. That is correct.

Q. Suppose a man slapped his hand on the mouth of a person, is it impossible to have that finger in the mouth?

A. I would say so.

Q. Why?

A. Because, you can try it yourself and see if you can bite yourself there, which I did, and which I had many other people try to do; see if you can bite it transversely.

[fol. 1521] Q. All right, is that the mark you are talking about?

A. That is the mark.

Q. Doctor, I will place my fingers in my mouth (illustrating.)

A. You would produce another mark on top of the finger which would be transverse.

Q. Suppose, Doctor, my fingers were in my mouth that way, and I applied pressure downwards, would I accomplish a mark there?

A. Not from—you said a bite, and if you were to apply——

Q. Let's not quibble over words; could teeth have made that mark that you found on this man's finger?

A. Teeth could have, but not from a bite.

Q. You distinguish, then, between a bite and pressure from teeth, is that right?

A. It would have to be the hand, as I tried to figure, it would have to be straight in there, that type of bite to occur, or at an oblique angle on the teeth.

Q. And you say the whole hand, is that right?

A. From pressure, I would say his fingers.

Q. Doctor, if a man was trying to stifle another from screaming and slapped his hand over her mouth——

A. Yes.

Q. —got one finger or two fingers in the mouth and [fol. 1522] pulled down on the lower jaw, that could cause the man to have the kind of wound you found, could it not?

A. It possibly could, yes.

Q. And after some time had passed, after the fingers had gotten in the mouth and pressure was applied and then some time had passed, could you find the scars you found?

A. Not unless they were pressed up on the upper teeth or lower teeth in the same manner without being, not being a bite. I understood it was a bite on which you were asking me these things.

Q. Let's confine ourselves to teeth marks, Doctor; they could be teeth marks, could they not?

A. There is one other thing, that the pitted scar, I don't think would be apt to be produced by teeth marks, which was present on the fingernails.

Q. What do you mean by pitted scar?

A. With a slight depression, little, round, oval scars.

Q. Could not be produced by teeth?

A. I don't believe they could be produced by teeth.

Q. Why not, Doctor, small, oval depressions, were they not?

A. Small oval depression about pinpoint size.

Q. How about pressure on the canine teeth?

A. Not in the same site.

[fol. 1523] Q. We are not talking about one bite, talking about pressure, at one point of pressure. Suppose pressure were applied at different times over a period of time, would not you find two pinpoint depressions, as you call them?

A. It would be very difficult to place them in the same scar within a few millimeters or a couple of millimeters of each other.

Q. Suppose that two different times pressure was applied from the canine teeth, the hand moved or the fingers moved, wouldn't you find those depressions then?

A. I can't answer that.

Q. Doctor, you don't know how those scars were caused, do you?

A. No, sir.

Mr. Alexander: I have nothing further.

Re-direct examination.

By Mr. Armstrong:

Q. But, although you don't know how the scars were caused, Doctor, in the light of all the matters that have been produced, have you, yourself, in determining your answer, it is still your considered opinion, is it not, that they were not made by human teeth?

A. It is my—Yes.

Mr. Alexander: By Yes you mean they were not made [fol. 1524] by human teeth?

The Witness: Yes.

Mr. Alexander: I have nothing further.

Mr. Armstrong: May this witness be excused?

The Court: Yes.

(Witness excused.)

The Court: The next witness for the defendant.

Mr. Armstrong: I have no further witnesses, your Honor. At this time I would like to move Defendant's Exhibits L and M, heretofore marked for identification, in evidence, those being the photographs of the lamp and the chair.

The Court: They will be marked Defendant's Exhibits L and M respectively in evidence.

Mr. Armstrong: Your Honor, does the court have before it the number designations of the other exhibits? I haven't had a chance to review yesterday's transcript.

The Court: Defendant's Exhibit I-9 is not in evidence.

Mr. Armstrong: It is not my intention to move it in evidence.

The Court: Defendant's Exhibit N is in evidence.

Mr. Armstrong: Defendant's Exhibit O?

The Court: That is in evidence.

Mr. Armstrong: Defendant's Exhibit P, is that in [fol. 1525] evidence?

The Court: That is in evidence.

Mr. Armstrong: Then there remains Defendant's Exhibit Q, which the defendant will move to be received in evidence at this time.

Mr. Alexander: To which we object; no proper foundation laid for that.

The Court: Objection sustained. Is there anything further for the defendant?

Mr. Armstrong: May I have just a moment?

Would your Honor, at this time, before the defendant rests, the defendant would request permission of the Court to have the last two "I" exhibits read by the jury before the People commence their portion of the case.

The Court: Very well. Defendant's Exhibits I-16 and I-21.

Mr. Alexander: Does your Honor's record indicate that was I-21?

The Court: Yes.

Mr. Armstrong: May counsel approach the bench?

The Court: You may.

(While jury peruses Defendant's Exhibits I-16 and I-21 respectively, the following proceedings were had at the bench outside the hearing of the jury:)

Mr. Armstrong: Your Honor, perhaps I am wrong on this [fol. 1526] foundation, but I just wanted to be sure we understood each other. My understanding of the stipulation was, the stipulation that we made this morning was that all the trash during the critical period of time was examined by Mr. Pinker, and that these three zippers were discovered among this trash, and that the mesh of the sieve is so fine

any other zippers would necessarily have been discovered if they did exist.

It occurs to me that having established the fact that Mr. Pinker examined all the residue of the furnace, the defendant's confession having said he threw the clothing in the furnace, the examination by Mr. Pinker of all the residue having disclosed these three zippers, that the foundation for the admission of these in evidence is established, and in view of the fact that it was found in the trash.

The Court: Is there anything to tie this up to the defendant or any other person connected with these proceedings?

Mr. Armstrong: Oh, why, yes, your Honor, this probably is just a matter of argument, and this is the basis of the court's ruling, but it is my opinion, and I don't think it is an unreasonable one, and not really subject to expert inquiry, but I think it would be a matter of common observation that these particular zippers appear to me by their size [fols. 1527-1957] to be skirt zippers as opposed to trouser zippers. They are smaller.

The Court: In other words, you are saying that these zippers are not connected with this case or this defendant in any way. By the same token, then, those six barrels of ashes would also be admissible.

Mr. Alexander: Twenty-odd barrels.

The Court: And all the tin cans that he examined would be admissible.

Mr. Armstrong: No, your Honor, the only thing is that the witness testified that, while we have this much of a zipper left, that the zippers burned. If the defendant had in fact thrown his trousers into the incinerator or *shoot* or whatever it was, included the trousers, and the witness testified how teeth are missing because the material burned up and the teeth all through; but we have these left. Therefore, if the defendant's trousers had in fact been burned and screened carefully enough, they would have recovered —inasmuch as these three zippers were recovered, they would have recovered——

The Court: Well, I don't want to hear any more on that; the reasoning that you offer is obscure, irrelevant and immaterial. The offer is inadmissible. Objection is sustained.

[fol. 1958] Santa Monica, California

Thursday, December 8, 1955

5:20 O'Clock P. M.

JURY RETURNS FOR ADDITIONAL INSTRUCTIONS

The Court: Let the record show the jury is present and representatives of the People, counsel for the defendant, and the defendant are present. I want the record to show that the Court received a note from a juror, signed by Clarence Richmond as foreman, in which a question was asked on a question of law, and the Court sent the note back to the jury. I want to suggest that if at any time during the proceedings you have questions on points of law, the proper way is to let the bailiff know and he in turn will have you escorted out here and I will give you instructions on the law in open court where everyone has the opportunity to hear it.

As I recall the question you did ask in that note, it was to the effect that if you, as jurors, should believe that the defendant did request counsel, and if you should believe that he was denied the opportunity of counsel, must you necessarily exclude the consideration of the written confession, or may you nevertheless consider the written confession, and whether or not it was voluntary.

Now on this point I will re-read portions of two of my instructions on that subject. The Court gave this Instruc-
[fol. 1959] tion Number 21:

You are instructed that a defendant in a criminal case has a constitutional right to counsel at all stages of the proceedings. Refusal to grant a prisoner's request for counsel constitutes a denial of fundamental rights. Whether or not the defendant asked for counsel, and if he did whether he was or was not denied an opportunity to consult with counsel are circumstances you may consider among others in determining whether the written confession was voluntary or involuntary.

And then the last portion of Instruction Number 20 reads as follows:

If a confession is made when the accused is under arrest and is being detained, or when he is not represented by counsel, or when he has not been told that any statement he

might make will or may be used against him, such circumstances in and of themselves do not make the confession involuntary, but all the facts connected with the making of a confession, if one was made, including any such as I have mentioned, ought to be considered by you in determining whether or not the confession was voluntary.

Do you have any other questions on law which you would [fols. 1960-1977] like to ask?

Foreman Richmond: Please, your Honor, the jury would like to have Mr. Rutherford's testimony, all of it, I guess it is in Volume 8, read; also the maid's testimony, Inspector Korr's testimony, especially that on Page 421, Volume 5 of the transcript; and as to the location of the desk in Lt. Armstrong's office, and the jailer's testimony again.

The Court: Well, that's quite a big order. Let's take them one at a time. What is the first one—you may be seated, Mr. Richmond.

Foreman Richmond: Mr. Rutherford's testimony.

The Court: All right. Let's take that first. Do you want all of that read?

Foreman Richmond: Yes.

(Whereupon the record from Page 652 to 668 was read, as follows:

. . . . . .

[fols. 1978-2047] The Court: What was the next?

Foreman Richmond: The maid's testimony.

The Court: I have that here. That runs 104 pages. Do you want to read all of it?

Foreman Richmond: Let the juror state how much information he wants of the testimony.

Juror Kavanaugh: Cross examination of the maid.

Whereupon the record was read from Page 167 to 17[illegible] as follows:

. . . . . .

[fol. 2048] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA
IN BANK

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent

v.

JOHN RUSSELL CROOKER, JR., Defendant and Appellant

Crim. 5856

OPINION—Filed November 21, 1956

This is an automatic appeal from a judgment of guilty of murder in the first degree after trial before a jury.

Viewing the record in the light most favorable to the People, it discloses that Norma McCauley on July 4, 1955, attended a barbecue dinner at which Mr. Baird was present. About 12:15 a.m., July 5, 1955, he accompanied Mrs. McCauley in her car to her home. Two other persons followed them in Mr. Baird's car. They arrived at Mrs. McCauley's home at 1100 Somera Road, Los Angeles, around 12:30 a.m. Mr. Baird entered the house with Mrs. McCauley, said good-night, walked out to his car and left in it with the persons who had followed him to Mrs. McCauley's residence.

Defendant, who had been employed as a houseboy in the deceased's home, freely and voluntarily wrote and signed [fol. 2049] a confession in which he stated that late in the evening of July 4, 1955, he went to the deceased's home, entered the house through the rear and hid in a closet in her children's room until they were asleep.

He stated in that Mrs. McCauley came home about 12 or 1 o'clock and he waited until she was in her own bedroom. He then entered and talked with her for over an hour in an endeavor to have her tell him her reasons and feelings for leaving me. He said she would not talk about it.

Finally, being sleepy, she began to undress and was going to sleep, whereupon he found a kitchen knife about ten inches long with a blade about six inches. He then went back to the chaise lounge upon which she was reclining, put the

knife in his coat pocket and knelt beside her for a long time. After she was asleep he took her throat in his hands and she choked and started to scream.

Hearing the maid, he reached for the knife and pushed and pushed on it, but Mrs. McCauley still made sounds and struggled. He then choked her with some clothes which he put around her throat. After this he left the house, returned to his apartment and fell asleep until shortly before noon.

[fol. 2050] After trial the jury returned a verdict reading: "We, the Jury in the above entitled action, find the Defendant, John Russell Crooker, Jr., guilty of murder, a felony, as charged in . . . the . . . information and find it murder of the first degree."

Defendant relies for reversal of the judgment on these grounds:

First: That he was denied due process of law because of the refusal of the investigating officers to allow him to consult with an attorney upon demand being made that he be permitted to do so.

This contention is without merit. Defendant testified that he made repeated requests for an attorney from the time of his arrest and throughout his questioning by the officers. Officer Gotch testified that the first time defendant asked to call an attorney was at the Central Station when the following occurred:

"Q. When he made the request for an attorney, what did you tell him?

"A. I asked him who did he want for an attorney.

"Q. And he said what?

"A. He stated he didn't know.

[fol. 2051] "Q. What else did he say on this subject?

"A. I stated to him that after our investigation was concluded he could call an attorney, and if he didn't have funds to hire an attorney, when he went to Court a public defender would be assigned to handle his case.

"He then stated that he had a friend who had been an instructor at Pepperdine College that would probably handle the case for him. I asked him who the name was, and he said it was a man by the name of Simpson, who lived in Long Beach.

"Q. He asked you if he could call an attorney at that time, and you told him that he could call after your investigation was completed, is that right?

"A. I told him, after I was through with the investigation, he could make a call."

Several other officers denied they ever heard defendant ask for an attorney and testified that defendant was told he did not have to say anything if he didn't want to. They also testified that no force was used against him and that his confession was freely and voluntarily made.

The applicable test as to the admissibility of a confession is whether, considering the circumstances, the confession was freely and voluntarily made without any inducement held out to the accused. (Rogers v. Superior Court, 46 A.C. 1 at 7 [11].)

[fol. 2052] An examination of the record discloses conflicting testimony, that of the officers on the one hand denying any force or that promises were made to defendant in consideration of the confession he made. This is opposed to defendant's statement that he was slapped on one occasion and struck in the stomach on several occasions. In addition, when he took the stand, defendant was examined in detail as to his confession by the deputy district attorney and in each instance he admitted the officers had not told him what to say or write in his confession.

The conflict in the testimony was thus squarely placed before the jury, whose finding was resolved against defendant's contentions, and it is binding upon this court. (People v. Mehaffey, 32 Cal. 2d 535 at 548 [7], 553 [11].)

The trial court instructed the jury as follows: "You are instructed that a defendant in a criminal case has a constitutional right to counsel at all stages of the proceedings. **Refusal to grant a prisoner's request** for counsel constitutes a denial of fundamental rights. Whether or not the defendant asked for counsel, and if he did, whether he was or was not denied an opportunity to consult with counsel, are circumstances you may consider, among others, in determining whether the written confession was voluntary or involuntary."

[fol. 2053] Thus the question was presented to the jury for its determination as to whether defendant's request for an

attorney and the officers' conduct relative thereto resulted in a denial of defendant's fundamental rights, and the jury found against defendant's contention. In view of the evidence, we are of the opinion the jury's determination was amply supported.

The due process clause of the fourteenth amendment of the federal Constitution and Article I, section 13, of the California Constitution guaranteé a defendant the right to be represented by counsel in every stage of the proceedings, and deprivation of this guarantee may be a violation of the due process clause of the fourteenth amendment. To constitute deprivation of due process, however, the denial of the right of the accused to be represented by counsel in every stage of the proceedings must have so fatally infected the regularity of his trial and conviction as to violate the fundamental aspects of fairness and result in a miscarriage of justice. (Lisenba v. California, 314 U.S. 219, 236; Stroble v. California, 343 U.S. 181 at 197.)

The burden of showing unfairness and a miscarriage of justice by the denial of defendant's right to counsel in some stage in a proceeding against him rests upon the defendant. (Stroble v. California, supra, at p. 198.)

[fol. 2054] The Supreme Court of the United States in Stroble v. California, supra, quotes with approval from Adams v. United States ex rel. McCann, 317 U.S. 269 at 281, where it said: "If the result of the adjudicatory process is not to be set at naught, it is not asking too much that the burden of showing essential unfairness be sustained by him who claims such injustice and seeks to have the result set aside, and that it be sustained not as a matter of speculation but as a demonstrable reality."

From an examination of the record and the statements of fact set forth above, it appears the police officers' conduct relative to defendant's request for an attorney in no way affected the voluntariness of defendant's confession. On the contrary, the record discloses ample evidence to support the jury's finding that it was freely and voluntarily made without duress or the promise of reward.

In the one instance in which defendant requested an attorney the officers' attitude thereto in no way affected the voluntariness of the confession nor did it in any way result

in any unfairness to defendant at the trial. There was no miscarriage of justice.

[fol. 2055] *Second: That defendant's confession was obtained in violation of his constitutional rights and therefore was inadmissible in evidence.*

This contention is likewise devoid of merit. As pointed out above, there was a conflict in the evidence as to whether the confession was voluntary. There was also a conflict in the evidence as to the facts upon which the conclusion was necessarily based that the confession was free and voluntary, by the court in the first instance and finally by the jury to whom the matter was submitted on proper instructions. Since the evidence fully supports the finding of the trial court and the jury, their finding that the confession was freely and voluntarily made and not in violation of any of defendant's constitutional rights is binding upon this court. (People v. Mehaffey, supra.)

In People v. Gonzales, 24 Cal. 2d 870 at 876 [4], Mr. Justice Shenk thus states the rule: "The procedural steps in the matter of receiving confessions in evidence are outlined in the decisions. At the time the confession is offered, it is incumbent on the prosecution to lay the foundation for its introduction by preliminary proof showing that it was freely and voluntarily made. (Citing authorities.) Before the confession is received, however, the defendant if he [fol. 2056] requests it must be accorded the opportunity to introduce evidence to overcome the prima facie showing, and if incrimination is dependent upon the confession a refusal of the court to permit such opportunity may constitute prejudicial error. (Citing authorities.) It is the function of the court in the first instance to resolve any conflict in evidence on the subject (citing authorities), and if the court concludes that the confession was not free and voluntary it has the power and is in duty bound to withhold it from the jury's consideration. However, if there is evidence that the confession was free and voluntary, it is within the court's discretion to permit it to be read to the jury, and to submit to the jury for its determination the question whether under all the circumstances the confession was made freely and voluntarily. (Citing authorities.) In such a case the court passes preliminarily on the question of the voluntary nature

of the confession and its admissibility and although it may determine that the confession is voluntary and admissible, its ruling is not binding on the jury; and it is for that body 'to determine in the last analysis whether a confession is freely and voluntarily made.' (Citing authorities.) The jury determines the issue of the nature of the confession, that is, whether it is voluntary or involuntary, on all the evidence on the issue; and the court is not required to re- [fol. 2057] ceive evidence out of the hearing of the jury for the purpose of determining preliminarily the question of admissibility. (Citing authorities.)"

"Third: That the trial court erred in striking from the instruction relative to defendant's constitutional right to have counsel at all stages of the proceedings, which is set forth above, the following: "Should you find from the evidence in this case that the defendant made requests for counsel which were refused by the officers who had him in custody, then, in that event, I instruct you that People's Exhibit 18 in evidence, the written confession of the defendant, should be absolutely disregarded by you in the determination of this case."

There was no error in the omission from the instruction which the court gave. The jury may accept as true a portion of the testimony of a witness and disbelieve the remainder or have a reasonable doubt as to its correctness. (People v. Hill, 126 Cal. App. 2d 378 at 380 [3].) The burden is upon defendant to show that through wrongful conduct he was deprived of a fair trial. (People v. Guarino, 132 Cal. App. 2d 554 at 558 [3]; Stroble v. California, supra.)
[fol. 2058] Defendant does not contend that his confession was false. On the contrary, as pointed out above, when he was examined during the course of the trial as to the statements in the confession he admitted he had made them and only denied he had in fact killed the decedent.

Fourth: That certain action which took place in the district attorney's office constituted prejudicial error.

It did not. In the afternoon of July 6 defendant was taken to the office of the district attorney, who asked the defendant to repeat the confession he had previously written. Defendant asked the district attorney if he would let him have an

attorney. Mr. Roll, the district attorney, had Mr. Simpson, the attorney suggested by defendant, called on the telephone and when defendant, while talking with Mr. Simpson said that they were making him answer their questions, Mr. Roll interrupted the conversation and told the attorney there was no coercion used at all and everything defendant said was free and voluntary.

Upon objection of defendant, all that occurred in the district attorney's office was excluded from the evidence. It is therefore obvious that no prejudice resulted to defendant from anything that might have occurred at that meeting.

[fol. 2059] *Fifth: The trial court erred in denying defendant's motion for a new trial because of misconduct of the jury in consuming alcoholic beverages after submission of the case to them.*

This contention is not sound. It was stipulated that after the case was submitted to the jury and prior to their evening meal on December 8, 1955, ten of the twelve jurors had consumed "one drink apiece and no more" and that one juror drank a double Manhattan. After having consumed the alcoholic beverages the jurors had dinner, slept the entire night and had breakfast the following morning. They then resumed their deliberations, did not go out to lunch but had lunch sent into them, and reached a verdict at about 1:30 in the afternoon on December 9, 1955.

It is a matter of common knowledge that the effect of the quantity of alcohol consumed in the instant case, followed by a large meal, a night's sleep and breakfast, would have been entirely dissipated and could have had no influence upon the mental operations of the jury. In passing upon a similar question in People v. Van Horn, 119 Cal. 323 at 333, this court said: "To set aside a verdict on account of these facts would be preposterous." (Cf. People v. Leary, 105 Cal. 486 at 491 et seq.; People v. Sansome, 98 Cal. 235 [fol. 2060] at 239; People v. Bemmerly, 98 Cal. 299 at 301; People v. Deegan, 88 Cal. 602 at 605; People v. Romero, 12 Cal. App. 466 at 470.)

In the present case the trial court passed upon the question here presented on a motion for a new trial and held that the consumption of the intoxicant had not prejudiced

defendant, nor had it resulted in a miscarriage of justice. The evidence amply supports this conclusion.

Sixth. The evidence was insufficient to support the judgment.

This proposition is untenable. After conviction all intendments are in favor of the judgment and a verdict will not be set aside upon the ground of insufficiency of the evidence unless the record clearly shows that upon no hypothesis is there substantial evidence to support it. (People v. Lindley, 26 Cal. 2d 780 at 791 [7].)

Applying this rule to the facts in the instant case the record discloses the corpus delicti was amply proven by the finding the decedent's body which had been strangled and stabbed and the testimony of the doctor that decedent's death was due to the stab wounds and strangulation. Therefore, the confession of defendant was admissible to show he had been lying in wait for the decedent and had stabbed and choked her, with the result that she died.

[fol. 2061] *Seventh: That the "silent verdict" of the jury as to punishment was insufficient to impose the penalty of death.*

In the circumstances of the record before us this contention is likewise untenable. The trial court instructed the jury relative to the penalty as follows: "The law of this state provides that every person guilty of murder in the first degree shall suffer death or confinement in the state prison for life, at the discretion of the jury that finds him guilty. If you should find the defendant guilty of murder in the first degree, it will be your duty to determine which of the two penalties shall be inflicted, the death penalty or confinement in the state prison for life. If you should fix the penalty as confinement in the state prison for life, you will so indicate in your verdict, using a form that will be handed to you when you retire to deliberate, but if you should fix the penalty as death, you will not specify the death penalty in the verdict and you say nothing about punishment in the verdict. In determining which punishment shall be inflicted, you are entirely free to act according to your own judgment."

It is urged that the form of verdict submitted to the jury

under the foregoing instruction does not adequately permit the jury to express in the verdict its intention as to the penalty when the death penalty is imposed. As noted, the instruction provides that "If you should fix the penalty as confinement in the state prison for life, you will so indicate [fol. 2062] in your verdict." The argument seems to be that this court should also require that the trial court give an instruction providing that "If you should fix the penalty at death you should so indicate in your verdict," and accordingly provide such a form. It is sufficient to note that the form of verdict which it is urged that this court now require was furnished to the jury and returned with the death penalty imposed in the case of People v. Green, 217 Cal. 176, 177. (See also People v. Orcalles, 32 Cal. 2d 562, 567, footnote 1; People v. Hall, 199 Cal. 451, 456 [4]; People v. Green, 47 A.C. 211, 225, footnote 3.)

The judgment, order denying defendant's motion to set aside the verdict, and the order denying the motion for a new trial are each affirmed.

McComb, J.

We concur: Gibson, C. J., Shenk, J., Traynor, J., Schauer, J., Spence, J.

[fol. 2063] DISSENTING OPINION

I dissent.

I disagree with the underscored portion of the following statement from the majority opinion: "The due process clause of the fourteenth amendment of the federal Constitution and article I, section 13, of the California Constitution guarantee a defendant the right to be represented by counsel in every stage of the proceedings, and deprivation of this guarantee may be a violation of the due process clause of the fourteenth amendment. *To constitute deprivation of due process, however, the denial of the right of the accused to be represented by counsel in every stage of the proceedings represented by counsel in every stage of the proceedings must have so fatally infected the regularity of his trial and conviction as to violate the fundamental aspects of fairness and result in a miscarriage of justice.* (Lisenba v. Cali-

fornia, 314 U.S. 219, 236; cf. Stroble v. California, 343 U.S. 181 at 197.)"

Part of the underscored statement is found in the Lisenba case. However, it affirmatively appears in the opinion in the Lisenba case (230, 231) that defendant had the advice of counsel at all times. The Supreme Court was there speaking of an allegedly coerced confession. It is said (pp. 236, [fol. 2064] 237): "As applied to a criminal trial, denial of due process is the failure to observe that fundamental fairness essential to the very concept of justice. In order to declare a denial of it we must find that the absence of that fairness fatally infected the trial; the acts complained of must be of such quality as necessarily prevents a fair trial. Such unfairness exists when a coerced confession is used as a means of obtaining a verdict of guilt. We have so held in every instance in which we have set aside for want of due process a conviction based on a confession."

In the Stroble case an allegedly coerced confession was also involved. There counsel was denied the privilege of consulting defendant during his interrogation by the district attorney. The Supreme Court said (at pages 197 and 198, citing the Lisenba case) that "Upon the facts of this case, we cannot hold that the illegal conduct of the law enforcement officers in not taking petitioner promptly before a committing magistrate, coerced the confession which he made in the District Attorney's office or in any other way deprived him of a fair and impartial trial.

"As to the refusal of the prosecutors to admit counsel during their interrogation of petitioner, counsel stated that he had come to the District Attorney's office at the request of petitioner's son-in-law merely to inquire of petitioner as to [fol. 2065] his guilt. *At no point did petitioner himself ask for counsel.* In light of these facts, the District Attorney's refusal to interrupt the examination of petitioner, which had been proceeding for almost an hour, so that counsel could make inquiry for petitioner's son-in-law, does not constitute a deprivation of due process, either independently or in conjunction with all other circumstances in this case." (Emphasis added.)

In In re Masching, 41 Cal. 2d 530, 534, defendant requested counsel, and a continuance on the ground that he had been "confined to bed." His request was denied. We there said

that "Under all the circumstances this procedure amounted to a denial of petitioner's constitutional right to counsel. It follows that his conviction cannot be permitted to stand and that he should be remanded to custody for further proceedings in the municipal court in conformity with his right to counsel. (*In re McCoy*, 32 Cal. 2d 73, 76-77 [194 P. 2d 531]; see *In re Egan*, 24 Cal. 2d 323, 337 [149 P. 2d 693]; *cf. People v. Lanigan*, 22 Cal. 2d 569, 572-577 [140 P. 2d 24, 148 A.L.R. 176].)" In People v. Lanigan, 22 Cal. 2d 569, 575, we said, quoting from Glasser v. United States, 315 U.S. 60, 75, 76, "To determine the precise degree of prejudice sustained by Glasser as a result of the court's appointment of Stewart as counsel for Kretske [a co-defendant] is at once difficult and unnecessary. *The right to have the assistance of counsel* [fol. 2066] *is too fundamental and absolute* to allow courts to indulge in nice calculations as to the amount of prejudice arising from its denial. [Citing cases.]" (Emphasis added.) We continued: "Although the Sixth Amendment is applicable only to trials in federal courts (*Betts* v. *Brady*, 316 U.S. 455 [62 S.Ct. 1252, 86 L.Ed. 1595]), the same right is protected in this state by article 1, section 13 of our Constitution providing that 'In criminal prosecutions, in any court whatever, the party accused shall have the right . . . to appear and defend, in person and with counsel.'"

In People v. Robinson, 42 Cal. 2d 741, 745, 746, we again quoted from the Glasser case and the Lanigan case in reversing a judgment. "Even as we have held that the right to the assistance of counsel is so fundamental that the denial by a state court of a resonable time to allow the selection of counsel of one's own choosing, and the failure of that court to make an effective appointment of counsel, *may so offend our concept of the basic requirements of a fair hearing as to amount to a denial of due process of law contrary to the Fourteenth Amendment.*" (Emphasis added; 315 U.S. 60, 70.)

In view of the Glasser case and the California cases following it, it appears to me that the statement in the majority opinion heretofore set forth is incorrect. If we continue to follow the Glasser case, we will find it "unnecessary" to determine the exact amount of prejudice arising from a [fol. 2607] denial to defendant of counsel at every stage of the proceeding in any court whatever! As was said in the

Glasser case "The right to have the assistance of counsel is too fundamental and absolute to allow courts to indulge in nice calculations as to the amount of prejudice arising from its denial."

I have heretofore pointed out that the Stroble case is not like the case at bar since there the defendant did not himself ask for counsel. The citation of the Stroble and McCann (317 U.S. 269)* cases are, therefore, inapplicable here.

The defendant's confession was undoubtedly an important factor in defendant's conviction of the crime of which he was accused. The confession was made without benefit of counsel which had been requested by defendant. It appears to me that if our constitutional safeguards are to be observed, they should be observed to the letter. This concept is forcibly declared by the Supreme Court of the United States in a recent decision (Ullman v. United States, 76 S.Ct. 497, decided March 26, 1956). Mr. Justice Frankfurter speaking for the court stated (p. 501): "Nothing new can be put into the Constitution except through the amendatory process. Nothing old can be taken out without the same process.

"No doubt the constitutional privilege may, on occasion, save a guilty man from his just desserts. It was aimed at a [fol. 2068] more far-reaching evil—a recurrence of the Inquisition and the Star Chamber, even if not in their stark brutality. Prevention of the greater evil was deemed of more importance that occurrence of the lesser evil. Having had much experience with a tendency in human nature to abuse power, the Founders sought to close the doors against like future abuses by law-enforcing agencies.

"As no constitutional guarantee enjoys preference, so none should suffer subordination or deletion. It is appropriate to read the conviction expressed in a memorable address by Senator Albert J. Beveridge to the American Bar Association in 1920, a time when there was also manifested impatience with some of the restrictions of the Constitution in the presumed interest of security. His appeal was to the Constitution—to the whole Constitution, not to a mutilating selection of those parts only which for the moment find favor. [He said:] 'If liberty is worth keeping and free

* The McCann case was involved with the question of waiver of counsel and trial by jury.

representative government worth saving, we must stand for *all* American fundamentals—not some, but all. All are woven into the great fabric of our national well-being. We cannot hold fast to some only, and abandon others that, for the moment, we find inconvenient. If one American fundamental is prostrated, others in the end will surely fall. The success or failure of the American theory of society and government, depends upon our fidelity to every one of those inter-dependent parts of that immortal charter of [fol. 2069] orderly freedom, the Constitution of the United States.' (Beveridge, The Assault upon American Fundamentals, 45 Reports of American Bar Ass'n., 188, 216 [1920].) To view a particular provision of the Bill of Rights with disfavor inevitably results in a constricted application of it. This is to disrespect the Constitution."

I am of the opinion that defendant's requested instruction relative to the jury's disregard of the confession should have been given. Defendant was entitled to, and should have been accorded, the right to counsel at the time he made the confession. As a result, the confession was obtained in violation of his constitutional rights and should not have been considered by the jury.

I would therefore reverse the judgment.

Carter, J.

[fol. 2070] IN THE SUPREME COURT OF THE STATE OF CALIFORNIA IN BANK

Order Due December 19, 1956

[Title omitted]

ORDER DENYING REHEARING—Filed December 19, 1956

Appellant's petition for rehearing denied.

Carter, J. is of the opinion that the petition should be granted.

[File endorsement omitted.]

Gibson, Chief Justice.

[fol. 2071] IN THE SUPREME COURT OF THE STATE OF CALIFORNIA IN BANK

[Title omitted]

ORDER DENYING APPLICATION FOR STAY OF EXECUTION—Filed March 27, 1957

Application for stay of execution denied.
This order is final forthwith.

[File endorsement omitted.]

Gibson, Chief Justice.

(Clerk's Certificate to foregoing paper omitted in printing.)

[fol. 2072] IN SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1956

No. —

JOHN RUSSELL CROOKER, JR., Petitioner

vs.

PEOPLE OF THE STATE OF CALIFORNIA

ORDER EXTENDING TIME IN WHICH TO FILE PETITION FOR WRIT OF CERTIORARI—March 14, 1957

It having been ascertained that the Supreme Court of California denied a petition for rehearing on December 19, 1956, and that the statutory time for filing a petition for certiorari would therefore expire on March 19, 1957,

It is ordered that my order of March 13th denying the application for an extension of time, as being out of time, is vacated and that the time for filing a petition for certiorari is extended to and including April 23, 1957.

Wm. O. Douglas, Associate Justice of the Supreme Court of the United States.

Dated this fourteenth day of March, 1957.

[fol. 2073] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1956

No. 707 Misc.

[Title omitted]

On Petition for Writ of Certiorari to the Supreme Court of the State of California

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND PETITION FOR WRIT OF CERTIORARI—June 10, 1957

On consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted limited to questions 1 and 2 presented by the petition for the writ which read as follows:

"1. Was the defendant denied due process of law by the refusal of the investigation officers to allow him to consult with an attorney upon demand being made to do so while he was in custody?

2. Was the defendant denied due process of law by the admission into evidence of a confession which was taken from him while in custody and after he had been in such custody for fourteen hours and had not been allowed to consult with his attorney?"

The case is transferred to the appellate docket as No. 1073 and placed on the summary calendar, and assigned for argument immediately following No. 586 Misc. (now No. 1072).

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

June 10, 1957.

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 178

JOHN RUSSELL CROOKER, JR.,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

PETITIONER'S OPENING BRIEF

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 178

JOHN RUSSELL CROOKER, JR.,

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THE PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

PETITIONER'S OPENING BRIEF

To the Honorable Earl Warren, Chief Justice of the United States of America, and to the Honorable Associate Justices of the Supreme Court of the United States:

This is an appeal to the Supreme Court of the United States pursuant to the order of the United States Supreme Court granting certiorari to the State of California. The defendant was convicted in the Los Angeles Superior Court of the murder of Mrs. Norma McCauley on July 5, 1955. The Supreme Court of the State of California affirmed the conviction with Justice Carter dissenting (*People* v. *Crooker,* 47 Advance Cal. 354, 303 Pacific Second 753). This Court granted certiorari limited to two questions as follows:

1. Was the defendant denied due process of law by the refusal of the investigation officers to allow him to con-

sult with an attorney upon demand being made to do so while he was in custody?

2. Was the defendant denied due process of law by the admission into evidence of a confession which was taken from him while in custody and after he had been in such custody for fourteen hours and had not been allowed to consult with his attorney?

Factual Statement

Norma McCauley was found by her children in the bedroom of her home on the morning of July 5, 1955. She was found to have been stabbed and strangled with the stabbing attributed as the principal cause of death and strangulation as the secondary cause of death. Transcript of Record, page 2.

John R. Crooker, Jr., the appellant herein had first met Mrs. McCauley in the summer of 1953 when he was a student at the University of California at Los Angeles Law School and sought employment from Mr. and Mrs. McCauley as a houseboy in order to defray his expenses while attending the University. Transcript of Record, page 442. This relationship had terminated prior to the date of the murder, but a personal relationship between the defendant and the deceased which had originated during the employment continued until a time shortly before her death. This relationship had been kept secret from Mrs. McCauley's friends and family although it was a warm and intimate relationship as disclosed by the affectionate letters written to the defendant from the deceased (see defendant's Exhibit "I"). The defendant was arrested in his home at approximately 1:30 p.m., of the 5th of July, Transcript of Record, page 129, and was held in custody continuously until approximately 3:30 a.m., of the 6th of July at

which time the defendant wrote in his own handwriting a purported confession of the murder of Mrs. McCauley.

There was considerable conflict as to what happened during the fourteen hours that intervened between the defendant's arrest and the writing of the purported confession. The defendant's version as contained in the Transcript of Record, pages 138 to 162, was as follows:

That on July 5, 1955, he was in his apartment at approximately the noon hour and was wearing pajamas, robe and slippers. That upon hearing a key inserted at his lock, he stood up at his desk and moved to the center of the room whereupon the door was opened and two police officers identified as Officers Krueger and Jackson of the Los Angeles Police Department burst into his room with drawn guns and demanded he put up his hands. After searching him, they placed handcuffs on his wrists and informed him he was under arrest and charged with a felony and that it was a serious matter, and that other officers would be over to question him regarding it. The defendant asked if he would be allowed to call an attorney and the officers replied that he would have an opportunity. A few minutes later two detectives from the Los Angeles Police Department arrived, who were later identified as Sergeant Jack Gotch and Officer William Stambler. They removed the handcuffs of the other police officers and placed their own handcuffs on the defendant, and commenced a search of the apartment. Crooker testified that he asked these officers if they had a search warrant, and they replied that they did not need a search warrant, Transcript of Record, page 141; he further testified that he asked these officers if he could be allowed to call an attorney. Sergeant Gotch did not reply to the inquiry regarding an attorney but placed a telephone call from the defendant's apartment, apparently seeking authority to conduct a search of defendant's apart-

ment. After the telephone call was made, a search of the apartment was made, and other persons arrived whom the defendant testified were not introduced to him by name but who were later identified as Lieutenant Grover Armstrong, Inspector Henry W. Kerr, Mr. Ray Pinker of the Crime Lab of the Los Angeles Police Department, Captain Warren N. Stilson and Chief Assistant Deputy District Attorney Adolph Alexander.

After the defendant's apartment had been thoroughly searched, and his clothes had been examined, he was asked if he owned an automobile and replying in the affirmative, was asked for the car keys. Transcript of Record, page 145. He gave the car keys to one of the officers and some of the men in the apartment left to return later bearing a manila envelope later identified as defendant's Exhibit "I", which contained approximately thirty or forty letters from the decedent to Crooker. Transcript of Record, page 150.

The defendant further testified that he was later taken to the Central Station of the Los Angeles Police Department in downtown Los Angeles and there was taken to the Polygraph Room and asked to submit to a lie detector test. The defendant testified that he then had a conversation with Officer Raymond C. Willis and that he informed Officer Willis that he did not wish to take the lie detector test at that time but would be willing to take the lie detector test if allowed first to consult with his attorney. Transcript of Record, page 152. The defendant testified that this request of his was refused. The defendant further testified that while at the Central Police Station he had further conversation with Sergeant Gotch regarding an attorney, and that he asked specifically to be able to consult an attorney at that time, and this request was refused.

The defendant further testified that while at Central Station he had a conversation with Lieutenant Armstrong

and asked Lieutenant Armstrong if he would be allowed to consult an attorney. The defendant testified that he further asked Lieutenant Armstrong if force would be used upon him to make him admit things before he were allowed to consult with an attorney, and the defendant testified that Lieutenant Armstrong replied, "This is a free country," Transcript of Record, page 158. Defendant testified, "I know that." Then he said he asked him again if he was going to use force to make the defendant answer all the questions and Lieutenant Armstrong replied, "You don't have to say anything that you don't want to." Transcript of Record, page 158. The defendant testified that during the periods of time that he was questioned by Sergeant Gotch, Officer Stambler, Sergeant Hooper, and Lieutenant Armstrong that he repeatedly asked for an opportunity to consult with counsel and informed them that he did not wish to answer their questions until he had had an opportunity to consult with counsel.

Defendant testified that he was next taken to the West Los Angeles Division of the Los Angeles Police Department, and upon arriving there at approximately 10:30 P.M., Transcript of Record, page 158, the questioning continued. The defendant testified that during the questioning by the various officers that he was told by the officers that he had stabbed and strangled Norma McCauley and that he had been "shaking her down" to obtain money from her and that he had killed Norma McCauley. He testified that the officers informed him that Kirk had discovered Norma McCauley's body and that he was questioned by the officers as to whether or not he had stabbed Mrs. McCauley or whether or not he had strangled Mrs. McCauley. The defendant testified further that throughout the inquiry he had asked all of the officers examining him from time to time if he could consult with an attorney.

The defendant testified that about two o'clock in the morning Sergeant Hooper was questioning him and suddenly jumped up and struck the defendant on the knee. Transcript of Record, page 161. At this point the defendant testified that he turned to Lieutenant Armstrong and said, "There, you see," and Lieutenant Armstrong said, "What do you mean?" Defendant said, "They are going to use force to make me answer their questions before I have an attorney." The defendant testified that at this time Lieutenant Armstrong said nothing but went on out of the room, whereupon Sergeant Hooper said, in substance, "Look, you son-of-a-bitch, I have been in this work for sixteen years and I'm not going to let someone like you come in here and tell me that he's not going to answer questions. You're going to tell us what we want to know, and you're going to tell us now." And with that, Sergeant Hooper struck the defendant with his fist in the defendant's stomach.

Defendant testified that he replied nothing and that at this point Sergeant Hooper struck him again in the stomach, saying, "Did you hear me?" The defendant replied, "Yes, I heard you," and Sergeant Hooper said, "Well, then, answer me when I ask you something or say something to you." Transcript of Record, page 161. Sergeant Hooper said, "You are going to give me the answers that I want or I'm going to take you out there and work on you like that for the rest of the night." Transcript of Record, page 162.

Defendant then testified that Sergeant Gravante sat down beside him and said that Sergeant Hooper meant exactly what he said. The defendant testified that he told Sergeant Gravante that he would say anything they wanted him to say if they would then leave him alone, and Sergeant Gravante told him that he would get a pencil and

paper and let the defendant write it down, and the defendant thereupon began to write. Transcript of Record, page 162. Defendant testified that he thereupon wrote the document admitted to evidence at the trial as People's Exhibit 18, and that upon completion of this document he was taken to the home of the decedent at 1100 Samara Road and the questioning resumed wherein he was asked what his various actions had been at the time of the killing and what he had done with the knife, and what he had done with the car keys. Defendant testified that he told the officers that he had thrown the knife and the car keys away, and that he had told them this because he had no idea where either knife or car keys were, Transcript of Record, page 200, and that he had to give them some explanation of their absence in order to terminate their questioning of him. He testified that he told them that he had burned the clothing that he had been wearing the evening of July 4, and that he had told them this for the same reason.

Defendant further testified that on July 6, 1955, he was taken to the office of District Attorney S. Ernest Roll, that at the time of the conversation in District Attorney Roll's office, the following people were present: Sergeant Gotch, Sergeant Hooper, Lieutenant Armstrong, Officer Stambler, Chief Assistant Deputy District Attorney Alexander, Dr. Marcus Crahan, a stenographer and Mr. Roll. Transcript of Record, page 167.

The defendant testified that Mr. Roll commenced questioning him and the defendant told him that from the beginning of his interrogation by the police officers that he had requested an opportunity to consult with an attorney, and that he would now like to see an attorney before answering questions of Mr. Roll. Transcript of Record, page 168. Defendant testified that Mr. Roll informed him that

he could have a Public Defender when he got into court, and he, the defendant, testified that he wanted an attorney with him at that time. Whereupon Mr. Roll told the defendant that he would be permitted to make a telephone call to an attorney.

The defendant testified that at this point Mr. Roll had his secretary place a call to the office of Raymond C. Simpson, an attorney in Long Beach, California, and that after introductory remarks, the defendant was directed to an extension telephone in the same room at an adjoining desk to that of Mr. Roll and commenced a conversation with Mr. Simpson.

The defendant testified that this was not a private conversation, that all of the officers and District Attorney Roll and Chief Assistant Deputy District Attorney Adolph Alexander were present at the time of the telephone call. Transcript of Record, page 169. Defendant testified that Mr. Roll kept his telephone instrument to his ear during the time that the defendant was talking with Mr. Simpson on his instrument, and that Mr. Roll interrupted the telephone conversation two or three times. The defendant testified that he asked Mr. Simpson what he could do to make the officers stop using force on him, and that at this point Mr. Roll cut into the conversation and told Mr. Simpson that there had been no coercion used at all, and that everything the defendant had said was free and voluntary. Transcript of Record, page 169.

Mr. Raymond C. Simpson was called by the defendant as a witness on voir dire, was sworn and testified as follows: At about four o'clock in the afternoon he received a telephone call from a person who identified himself as District Attorney S. Ernest Roll, that Mr. Roll informed him that he had John Crooker in his office and asked Mr. Simpson if he knew John Crooker. Upon Mr. Simpson's

reply in the affirmative, Mr. Roll said that Mr. Crooker would like to talk to him, whereupon a voice came on the line and Mr. Simpson testified he recognized it as being that of John R. Crooker, a former student of his at Pepperdine College. Mr. Simpson testified that the defendant explained the nature of his difficulties and then asked the question, "How can I stop them from using force to make me answer questions?" At which time Mr. Roll, or the voice identified as his, interrupted and said, "Simpson, you know better that that. No force has been used by this office whatsoever, and Crooker knows better than that." Transcript of Record, page 221. Mr. Simpson further testified that Mr. Roll informed him that he had already taken a statement from the defendant, and further testified that he was informed that the first opportunity that he would have to see the defendant would be at the West Los Angeles Police Station at approximately 7:00 P.M., that evening. He further testified that he was not invited to come to the District Attorney's Office to participate in the interview that was at that time going on. Transcript of Record, page 222.

Upon cross-examination of Mr. Simpson by Chief Assistant Deputy District Attorney Adolph Alexander, Mr. Simpson was asked questions as follows beginning at Transcript of Record, page 223: "Mr. Simpson, directing your attention to the conversation you have testified to with Mr. Roll and Mr. Crooker, when you received this call on the afternoon of the 6th of July, is it not a fact that Mr. Roll said to you 'Simpson?' and you said, 'Yes, Mr. Roll, how are you?', and Roll said, 'Pretty good, I am sitting here with a young man who has been placed under arrest in connection with a murder up in Bel Air, John Russell Crooker, I think that is the way he pronounces it,' and you said, 'Oh yeah, a former student of mine.' And then Mr. Roll said, 'What?', and you said, 'He was a former student

of mine.' And then Mr. Roll said, 'Yes. He has asked me—we have tried to take his statement. He said he wanted to talk to you. I asked him if you'd represent him. He said that he would like to talk to you in connection with the matter.' And you said, 'Yes.' And Roll said, 'And he's here, and if you want to talk to him, why I'll put him on the phone and you can talk to him.' And you said, 'Thank you kindly.' And then Crooker said to you, 'Hello, Mr. Simpson,' and then you made some reply, and then Crooker said, 'Well, I am as well as can be expected. I have been in custody since yesterday about noon. And, I, of course, feel that I need—would like to have counsel at the earliest opportunity. I don't have much resources, and, of course, at the time that they take me before the court I understand that I have recourse to a public defender. However, if I could get an attorney at this point I am also given to understand that I can have representation at this time. And, of course, I have what I feel is a very reasonable interest in having that representation at this time. And I would like to ask you personally if you are at all inclined to take the job, and also I would like to ask you if you will—if you would make a recommendation to me.'" Transcript of Record, page 227.

Mr. Alexander's cross-examination of Mr. Simpson proceeded in this vein, with Mr. Alexander asking the witness if each of the statements were not the statements that were made on the telephone conversation to which the witness replied, to the best of his knowledge that they were. The questions asked by Mr. Alexander further indicated that there were four separate interruptions in the telephone conversation between Mr. Simpson and the defendant Crooker by District Attorney Roll, and the witness verified that these interruptions had in fact occurred. Transcript of Record, pages 227 to 230.

Lois R. Johnson was called as a rebuttal witness for the People in the voir dire inquiry, was sworn and testified that she was a court reporter, and that she had taken shorthand notes of the proceedings in District Attorney Roll's office on the afternoon of July 6, 1955. She further testified that at the time the telephone conversation between Simpson and Mr. Roll commenced that she had stopped taking notes as she had standing orders to the effect that she was not to type the contents of a telephone conversation. Transcript of Record, page 334. Out of the presence of the jury, Mr. Alexander admitted that the District Attorney's Office had caused a wire recording to be made of all proceedings that were had in Mr. Roll's office, and that it was the intent of the District Attorney's office to play the wire recording of all proceedings, including the three-way telephone conversation between Mr. Roll, Mr. Simpson, and the defendant, Crooker. Transcript of Record, page 341.

The officers involved were called and testified as follows:

Sergeant Gotch testified that he did not recall the defendant making any request for an attorney while kept at Central Station. Sergeant Gotch admitted that there had been a conversation about an attorney at that time and that the name of Ray Simpson was mentioned, and that Mr. Simpson was identified as a former instructor of the defendant at Pepperdine College; that the defendant had asked whether he would be allowed to consult with Mr. Simpson and Sergeant Gotch testified that he informed the defendant that he would be able to call an attorney "after our investigation was concluded." Transcript of Record, page 83.

Officer Willis was called and denied that the defendant stated that he would take the lie-detector test after allowed an opportunity to consult with counsel, but admitted that

there had been a conversation about an attorney while Crooker was in the Polygraph room and that the name of Mr. Simpson was mentioned and that Mr. Simpson was identified as an instructor at Pepperdine College. Transcript of Record, page 135. Inspector Kerr, Theodore B. Lay and Officer Stambler were called and testified that they did not recall the defendant having requested an opportunity to consult with an attorney.

Lieutenant Grover Armstrong was called and testified that the questioning at the West Los Angeles Police Station took place in his office; that this office contains sound-recording equipment, but that at the time of the questioning, the sound-recording equipment was not employed. An objection was sustained to the question as to why the sound-recording equipment had not been used. Transcript of Record, pages 237 and 238.

Sergeant Hooper was called and testified the defendant did not make a request for an attorney in his presence. Sergeant Hooper also denied that he had struck the defendant on the knee or hit the defendant in the stomach or that he used profane and obscene language in questioning the defendant or that he had made the statements as hereinabove set forth by the defendant that were attributed to him. Transcript of Record, pages 242 and 243.

Later in Sergeant Hooper's testimony, Sergeant Hooper denied that he had ever had a conversation with the defendant about an attorney, either in the initial interrogation or in the conversation in the District Attorney's office. However, the transcript of the proceedings in the District Attorney's office showed that there had been a conversation by Sergeant Hooper respecting an attorney at which time Sergeant Hooper had told the defendant that he would not need an attorney at that time, but that the first occasion that he would need an attorney would be when

he went to Court. It is significant that at the time of Sergeant Hooper's testimony that at no time had he had a conversation about an attorney (People's proposed Exhibit 29), the transcript of the proceedings in the District Attorney's office had been stricken from evidence and it was only after the Court had observed that he would not allow an untruthful witness to take sanctuary behind the ruling of the Court, that Sergeant Hooper reluctantly admitted, "I may have said that."

The defendant further testified that while in the District Attorney's office, he told Mr. Roll, the District Attorney, that Sergeant Hooper had hit him and said to Sergeant Hooper, "You hit me twice in the stomach," to which Sergeant Hooper replied, "I don't think we hurt you," and that the defendant repeated the accusation and again Sergeant Hooper replied, "I don't think we hurt you." This testimony of the defendant's was unrefuted at the trial although Sergeant Hooper, Sergeant Gotch, and Lieutenant Armstrong were all admittedly present in the District Attorney's office with the defendant. Transcript of Record, page 214.

The People called as a rebuttal witness on voir dire a Frank Rutherford who testified that he was a police reporter for the Los Angeles Herald-Express Newspaper and that in the early morning hours of July 6, he had stood on a ledge directly below Lieutenant Armstrong's office in order to hear portions of the conversation and that there were no raised voices and no profanity. Mr. Rutherford identified People's Exhibit 23, a diagram of the office, and testified that he was familiar with the premises and further identified the ledge to which he referred as being the ledge flanking the steps to the main entrance of the West Los Angeles Police Station. Transcript of Record, pages 263 and 264. It later developed that People's Exhibit 23

had been drawn erroneously and that the ledge on which Mr. Rutherford testified he was standing on to hear the conversation directly under Lieutenant Armstrong's office was, in fact, several offices away from the office where the conversation was actually going on and further pictures introduced by the defendant (Defendant's Exhibits C, D, E, F, and G) showed that there was no ledge underneath the office in which the interrogation was being conducted and that a witness standing where Mr. Rutherford testified that he was standing would have been physically incapable of hearing any conversation in the office. Transcript of Record, pages 415 to 417.

POINT NO. 1

Was the Defendant Denied Due Process of Law by the Refusal of the Investigating Officers to Allow Him to Consult With an Attorney Upon Demand Being Made to Do So While He Was in Custody?

The appellant is aware of the fact that there is a discrepancy between his version of the interrogation and that of the officers who testified in the case; however, this court has the right and the duty to make an independent examination of the circumstances leading up to the making up of a confession and this duty cannot be foreclosed by the finding of a court, the verdict of a jury, or both. *Ashcraft* v. *Tenn.*, 322 U.S. 143 and *Lisenba* v. *Calif.*, 314 U.S. 219.

The discrepancies mentioned above are, as the court said in the case of *Ashcraft* v. *Tenn.*,

> "The inescapable consequences of secret inquisitorial practices and always evidence concerning the inner details of secret inquisitions is weighted against an accused, particularly where, as here, he is charged with a brutal crime."

As the court said further in the *Ashcraft* case:

> "We think a situation such as that here shown by uncontradicted evidence is so inherently coercive that its very existence is irreconcilable with the possession of mental freedom by a lone suspect against whom its full coercive force is brought to bear."

It is appellant's contention that this language is particularly applicable to the instant case on the basis of the admitted facts of what happened during the period of interrogation.

It is appellant's position here that the denial of defendant's request to consult with an attorney during a period of prolonged questioning of the defendant without presentation to a magistrate was a denial of due process to the defendant and that such a denial exists whether the coercion is physical or psychological. As was said by the court in the case of *Leyra* v. *Denno*, 347 U.S. 556, 74 SC 716:

> "We hold that the use of confessions extracted in such a manner from a lone defendant unprotected by counsel is not consistent with due process of law as required by our Constitution."

The peculiar need of the defendant for advice of counsel is shown by the peculiar circumstances in which the defendant found himself at the time of his arrest, charged with the murder of Mrs. McCauley. Appellant and the decedent had had an intimate relationship which had extended over a period of almost two years. The practical dilemma with which the defendant was confronted upon facing his inquisitors was whether he should admit to the secret, intimate relationship and thereby expose himself as a particularly likely suspect; or whether he should chance denying the intimate relationship in order to avoid

embarrassment and humiliation and present his position as a mere friend of the decedent with the risk that the officers would learn of the intimate relationship and thereby feel that his untruthfulness about the relationship was indicative of untruthfulness as to denials of her murder. This dilemma the appellant wished to place before an attorney and be advised as to proper procedure. As this court said in the case of *Chandler* v. *Fretag*, 348 U.S. 3, 75 S.Ct. 1, quoting with approval the language from *Powell* v. *Alabama*, 287 U.S. 45, 53 SC 55, 77 LED 158:

> "Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence . . . *he requires the guiding hand of counsel at every step in the proceedings against him.*" (Court's italics.)

The record herein discloses that during the time when counsel could have most effectively secured defendant's rights against deprivation, the officers of the state repeatedly refused to honor his request to consult with counsel of his own choice and selection. Defendant's need for legal advice was real, and his repeated requests to be allowed to consult an attorney cannot be assumed to have been other than in good faith. He was at the mercy of the police officers. They and they alone, although sworn to defend the Constitution, stood between defendant and his constitutional right to aid of counsel at the most critical phase of the entire proceedings. This, we submit, is not the due process of law which the Fourteenth Amendment assures.

In the recent case of *Mallory* v. *United States*, decided June 24, 1957, 77 S.Ct. 1356, this court held that much less

abusive and offensive conduct by police officers in a federal arrest constituted reversible error. The court pointed out that Mallory was not told of his right of counsel (nor was Crooker) or his right to preliminary examination before a magistrate, nor was he warned that he might keep silent, for that any statement made by him might be used against him. None of these safeguards were afforded the defendant in the instant case. As the court observed in the *Mallory* case:

> "Not until he had confessed, when any judicial caution had lost its purpose, did the police arraign him."

We submit that the more aggravated circumstances of the present case—in particular the denial of counsel—intensifies the infirmity from a procedural to a constitutional defect.

It is appellant's position here in light of this court's holdings in the *Leyra* case (*supra*), *Chandler* v. *Fretag* (*supra*), *Powell* v. *Alabama* (*supra*), *Chessman* v. *Teets*, 77 S.Ct. 1127 and *Mallory* v. *United States* (*supra*), that this court should announce a rule making the inquisitorial practices denounced in *Ashcraft* v. *Tenn.* (*supra*) so unprofitable to police officers that they will discontinue their use. Insistence upon reasonable opportunity to consult with counsel, when requested, during the pre-arraignment period will go far, we suggest, in forestalling such practices.

POINT NO. 2

Was the Defendant Denied Due Process of Law by the Admission Into Evidence of a Confession Which Was Taken From Him While in Custody and After He Had Been in Such Custody for Fourteen Hours and Had Not Been Allowed to Consult With His Attorney?

It is the appellant's position here that the confession was erroneously admitted to evidence by the trial judge at the conclusion of the voir dire inquiry.

This voir dire examination required several days of trial time and at its conclusion, the court had before it the admitted facts as set forth under Point No. 1 of this brief and in spite of these facts the trial judge admitted the confession to evidence holding as he did so that as a matter of law the confession was an admissible piece of evidence subject to the weight and credibility given to it by the jury. Transcript of Record, page 300.

Having admitted it to evidence, the trial judge, at the time of instructing the jury, rejected the following instruction requested by the defendant:

"You are instructed that a defendant in a criminal case has the constitutional right to counsel at all stages of the proceeding. Refusal to grant the prisoner's request for counsel prior to arraignment constitutes a denial of fundamental civil rights. Should you find from the evidence in this case that the defendant made a request for counsel which was refused by the officers who had him in custody, then, in that event, I instruct you that People's Exhibit 18 in evidence, the written confession of the defendant, should be absolutely disregarded by you in determination of this case." Transcript of Record, page 716. Instead of the requested instruction, the court modified the defendant's requested instruction to read as follows:

"You are instructed that a defendant in a criminal case has a constitutional right to counsel at all phases of the proceedings. Refusal to grant the prisoner's request for counsel constitutes a denial of fundamental rights. Whether or not the defendant asked for counsel, and if he did, whether he was or was not denied an opportunity to consult with counsel, are circumstances you may consider, among others, in determining whether the written confession was voluntary or involuntary." Transcript of Record, page 709.

After the jury had retired to deliberate upon a verdict, the foreman sent a note to the trial judge and in response to the note, the jury were summoned back into the court room and the following proceedings were had:

SANTA MONICA, CALIFORNIA—THURSDAY,
DECEMBER 8, 1955
5:20 O'CLOCK P.M.

The Court: "Let the record show the jury is present and representatives of the People, counsel for the defendant, and the defendant are present. I want the record to show that the Court received a note from a juror, signed by Clarence Richmond as foreman, in which a question of law, and the Court sent the note back to the jury. I want to suggest that if at any time during the proceedings you have questions on points of law, the proper way is to let the bailiff know and he in turn will have you escorted out here and I will give you instructions on the law in open court where everyone has the opportunity to hear it.

As I recall the question you did ask in that note, it was to the effect that if you, as jurors, should believe that the defendant did request counsel, and if you should believe that he was denied the opportunity of counsel, must you necessarily exclude the consideration of the written confession, or may you nevertheless

consider the written confession, and whether or not it was voluntary.

Now on this point I will re-read portions of two of my instructions on that subject. The Court gave this instruction No. 21:

You are instructed that a defendant in a criminal case has a constitutional right to counsel at all stages of the proceedings. Refusal to grant a prisoner's request for counsel constitutes a denial of fundamental rights. Whether or not the defendant asked for counsel, and if he did whether he was or was not denied an opportunity to consult with counsel are circumstances you may consider among others in determining whether the written confession was voluntary or involuntary.

And then the last portion of Instruction No. 20 reads as follows:

If a confession is made when the accused is under arrest and is being detained, or when he is not represented by counsel, or when he has not been told that any statements he might make will or may be used against him, such circumstances in and of themselves do not make the confession involuntary, but all the facts connected with the making of a confession, if one was made, including any such as I have mentioned, ought to be considered by you in determining whether or not the confession was voluntary." Transcript of Record, pages 709 and 710.

The only possible inference to be drawn from the jury's question is that they had determined the issue presented at the trial as to whether or not the defendant had in fact requested counsel while he was in custody in the defendant's favor. This being so, the defendant was entitled to have the jury instructed in accordance with the principle of law

that when a right is conferred by law everything necessary to the protection of that right is also conferred.

The complained of modification of defendant's requested instruction (Court's Instruction No. 21) converted the guarantee of the Fourteenth Amendment of the Constitution to a mere token and sham.

The issue as to whether or not the defendant had requested counsel while he was in custody and whether or not it had been denied to him was one of the principal issues of the trial and consumed several days of trial time with numerous witnesses being called by both the prosecution and the defense. The defendant's statements in this regard were contested by the people throughout. The question as posed by the jury indicated that this prime issue of the trial had been determined in the defendant's favor. It was appellant's position at the trial and it is appellant's position before this court that the trial court converted defendant's prevailing position into a Cadmean victory.

It is appellant's position before this Honorable Court that refusal to grant a prisoner's request for counsel constituted a denial of fundamental civil rights granted by the Fourteenth Amendment to the United States Constitution and that the admission into evidence of a confession obtained while the defendant was being held without being allowed to consult with counsel carried forward the denial of due process of law into the trial itself.

As this Court said in the case of *Lisenba* v. *Calif.*, 314 U.S. 219 at 236, 62 S.Ct. at page 290:

> "As applied to a criminal trial, denial of due process is the failure to observe that fundamental fairness essential to the very concepts of justice. In order to declare a denial of it, we must find that the absence of that fairness fatally infected the trial; the action com-

plained of must be of such quality as necessarily prevents a fair trial. Such an unfairness exists when a coerced confession is used as a means of obtaining a verdict of guilt. We have so held in every instance in which we have set aside for want of due process a conviction based on a confession."

This Court also said in the case of *Glasser* v. *United States,* 315 U.S. 60, 62 S.Ct. 457, 86 L.Ed. 680:

"The right to have the assistance of counsel is too fundamental and absolute to allow courts to indulge in nice calculations as to the amount of prejudice arising from its denial."

This Court has held that where a verdict of conviction does not show whether it is based on evidence properly admitted or evidence that offended the due process clause, a conviction cannot stand. In the case of *Williams* v. *North Carolina,* 317 U.S. 287 at 292. This court said:

"To say that a verdict of guilty should be upheld though we cannot know whether it cannot rest on the invalid constitutional ground on which the case was submitted to the jury would be to countenance a procedure which would cause a serious impairment of constitutional rights."

To same effect see *Stromberg* v. *People of the State of Calif.,* 282 U.S. 59 at 368 and *Bram* v. *United States,* 118 U.S. 530 at 540 and *Lyons* v. *People of the State of Oklahoma,* 322 U.S. 596. This court held that if an involuntary confession is admitted into evidence whether other evidence is sufficient to justify the verdict or not, the court will not consider the other evidence, for if the "admission of this evidence" denied a constitutional right to defendant, the error requires reversal.

It is significant to note that in the instant case the People relied almost entirely upon the confession. There is virtually no other evidence to support a verdict of guilt against this defendant.

The only evidence that tended to place the defendant at the scene of the crime was the testimony of a taxi driver that he had taken Crooker to the defendant's home at five-thirty o'clock in the afternoon on the 4th of July, Transcript of Record, page 62, which was at least eight to ten hours prior to the established time of her death. The murder weapon was never found. The car keys which the police had made a great effort to find and which the defendant testified he had made reference to in his confession at the instigation of the police officers, Transcript of Record, page 514, were later found to have been in the possession of the decedent's brother all the time, he having absent-mindedly picked them up in the kitchen, Transcript of Record, page 57, where the decedent's escort of the evening before testified he had laid them upon returning the decedent to her home.

Not only was there no other evidence connecting the defendant with the crime but there were extremely suspicious circumstances surrounding the testimony of other persons.

The maid who had been employed only five days before the death of Mrs. McCauley, Transcript of Record, page 19, testified that when the five year old child of the decedent came to her and said, "Mommy is in a mess," Transcript of Record, page 15; that she went to the door of Mrs. McCauley's bedroom, Transcript of Record, page 15, and observed Mrs. McCauley on the floor with her head and shoulders resting on the chaise lounge, Transcript of Record, page 16, and that she did not believe that Mrs. McCauley was dead, Transcript of Record, page 16, but testified that she thought Mrs. McCauley had hemorrhaged. However, she testified that she did not call out to Mrs.

McCauley and inquire of her what was the matter, Transcript of Record, page 36, that she did not go over to Mrs. McCauley to see if she could be of assistance to her, Transcript of Record, page 31, but that instead she brought the five year old child of Mrs. McCauley back into the room, Transcript of Record, page 31, and had the child pick up some keys that were scattered on the floor and put them in a purse, Transcript of Record, page 32, and place the purse upon the bed. Transcript of Record, page 35. She testified that she (the maid) at no time touched anything in the room. Transcript of Record, page 32.

This same witness also testified that she was able to hear the telephone ring at night, Transcript of Record, page 23, and testified positively that on the night of the murder the telephone had not rung. Transcript of Record, pages 22 and 23. Other evidence in the case proved that the telephone had rung over twenty times, Transcript of Record, page 428, and that Mrs. McCauley had had at least one conversation after her escort of the evening had left and prior to her death. Transcript of Record, page 434.

The evidence also disclosed that the contents of Mrs. McCauley's stomach showed eight ounces of partially digested food, Transcript of Record, page 5, although her last meal known to have been consumed was five and one-half hours prior to her death, Transcript of Record, page 12, and the expert witness physician testified that he did not expect to find any residue in the stomach from food consumed that long prior to the death. Transcript of Record, page 10.

The prosecution attempted to prove by introduction into evidence of a photograph of John Crooker that he had scratches upon his person, particularly upon his neck that were inflicted by the decedent. An expert witness called by the defendant testified in answer to a hypothetical question that if the decedent had scratched her assailant in a

manner to leave a mark such as shown in the photograph that he would expect to find pieces of skin beneath her fingernails. Transcript of Record, page 694. The fingernails of the decedent had been examined by the Los Angeles Police Department Crime Lab and their findings were negative. Transcript of Record, page 669.

The expert called by the defendant testified that the blood on the drapes which was spattered over an area from floor level to a height of six feet would indicate a struggle and that in his opinion such a spattering of blood would not be made by the simple withdrawal of a knife from a prone victim. Transcript of Record, page 697. No effort was made by the Los Angeles Police Department Crime Lab to type the blood found on the drapes to ascertain if the killer's blood was on the drapes in addition to the decedent's and the drapes were sent to the laundry and cleaned without opportunity to examine them.

Evidence, introduced by the People, showed that a great deal of blood had spattered all over the room in which the decedent was murdered and an examination of the defendant's personal effects and automobile were made in an attempt to find the presence of blood and the expert testified that the tests were such that if blood were present in the amount of one unit out of 300,000 units, it could be detected. Transcript of Record, page 664. Yet no evidence of blood was found on the person of the defendant, or in the automobile in which he admittedly had driven home on the night that Mrs. McCauley was murdered. Transcript of Record, page 673.

The evidence further showed that the decedent had had an arrangement with a neighbor by the name of Marilyn Low, whereby the two women had agreed that if one called the other during the night time hours and pretended to break a luncheon engagement that the one called would know by this code arrangement that the caller was in

trouble and would immediately summon the police. Transcript of Record, page 629.

Although the decedent had expressed to friends of hers a fear of John Crooker and although Marilyn Low was at home on the night of the murder, no telephone call was received by Mrs. Low from Norma McCauley, Transcript of Record, page 630, nor did Mrs. McCauley inform the person from whom she received a telephone call after her escort had left her home that she was in any danger or avail herself in any way of this means of sounding an alarm, Transcript of Record, page 434, although if the confession were true, John Crooker would have been with the decedent at the time she received this telephone call.

The foregoing is mentioned here by way of showing this court that there was ample reason for the jury to have found the defendant not guilty of the crime had it not been for the admission into evidence of the confession.

We submit that *Fikes* v. *Alabama*, 77 S.Ct. 281, requires a reversal of the present conviction. Although the duration of the interrogation, without arraignment, was longer there, the present case shows a more serious deprivation of constitutional rights. Here the defendant required, and repeatedly requested permission to obtain advice of counsel in order to ascertain how to properly answer police questions, and how to adequately resist the use of physical and psychological pressure. Timely advice of counsel might well have prevented defendant's will to resist from being overborne. Here, as in countless other similar cases, the always troublesome problem of the allegedly coerced confession—with its overtones of deliberate perjury on one side or the other—would in all probability never have arisen had defendant's request for counsel during the interrogation period been honored. We submit that the constitutional right to consultation with and advice of counsel means little if such a request can be denied with impunity. To

allow admission into evidence of a confession secured in the face of such a denial will only serve to strengthen the hand of the policeman and weaken one of the most important constitutional protections of the innocent. We submit that this Court should declare that any confession, obtained during a period of detention in which defendant has been denied the right to consult with counsel of his own choice within a reasonable time after request to do so has been made, is constitutionally inadmissible in evidence irrespective of whether it is shown to be voluntary or involuntary. In any event, under the circumstances here established, the use of defendant's confession should be held a denial of due process.

On the basis of the authorities cited herein, petitioner earnestly contends before this Honorable Court that the first question, "Was the defendant denied due process of law by the refusal of the investigating officers to allow him to consult with an attorney upon demand being made to do so while he was in custody?" must be answered in the affirmative. This being so, the second question must necessarily be answered affirmatively also. To do otherwise would amount to giving approval to lawless acts and to allow police officers to profit by their wrongs. In the instant case, the wrongdoing of the police officers constituted coercion. The coercion constituted an unfairness to the defendant in derogation of his rights under the 14th Amendment to the Constitution that necessarily prevented him from having a fair trial. The unfairness "fatally infected the trial" according to the test set forth in *Lisenba* v. *Calif.*, 314 U.S. 219 (*supra*) and the Constitutional guarantees demand that this conviction be reversed.

Respectfully submitted,

ROBERT W. ARMSTRONG
Attorney for Petitioner

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 178

JOHN RUSSELL CROOKER, JR.,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

PETITIONER'S REPLY BRIEF

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 178

JOHN RUSSELL CROOKER, JR.,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

PETITIONER'S REPLY BRIEF

This is Petitioner's Reply Brief in the United States Supreme Court in the matter of the order of this Court granting certiorari to the California Supreme Court in *People* v. *Crooker*, 47 Cal.2d 348, 303 P.2d 753. (*Crooker* v. *California*, 354 U.S. 908, 77 S.Ct. 1300.)

This Court granted certiorari limited to the two questions as follows:

(1) Was the Defendant Denied Due Process of Law by the Refusal of the Investigation Officers to Allow Him to Consult With an Attorney Upon Demand Being Made to Do So While He Was in Custody?

(2) Was the Defendant Denied Due Process by the Admission Into Evidence of a Confession Which Was Taken From Him While in Custody and After He Had Been in Such Custody for Fourteen Hours and Had Not Been Allowed to Consult With His Attorney?

Preliminary Statement

Petitioner was convicted in the Los Angeles Superior Court of the murder of Norma T. McCauley on July 5, 1955. Both Petitioner's Opening Brief and Respondent's Answering Brief set forth extended Statements of Fact. In addition, Petitioner makes considerable reference to pertinent facts in this Reply. Thus, in the interest of brevity, a Factual Statement is not repeated here.

Argument

In Petitioner's Opening Brief, filed herein, Argument was divided in accordance with the questions presented in the granting of certiorari in this matter. Respondent's Answering Brief also presents Argument in two parts, based upon these two questions. In this Reply, Petitioner respectfully presents his position before this Court in two contentions, based upon Respondent's contentions and the questions presented, as follows:

(1) This Defendant Was Denied Due Process Under the Federal and State Constitutions by Refusal of Investigating Officers to Allow Him to Consult With an Attorney Upon Request Being Made to Do So While He Was in Custody and Being Interrogated by the Officers:

The contention that a criminal proceedings is rendered void if it follows upon a deprivation of a defendant's con-

stitutional right of assistance of counsel is not novel. This Court has so held in cases originating in both state and federal jurisdictions. (*House* v. *Mayo*, 324 U.S. 42, 65 S.Ct. 517; *Glasser* v. *United States*, 315 U.S. 60, 62 S.Ct. 467; *Johnson* v. *Zerbst*, 304 U.S. 458, 55 S.Ct. 1019.)

As this Court said in *Powell* v. *Alabama*, 287 U.S. 45, 53 S.Ct. 55, a defendant "*requires the guiding hand of counsel at every step in the proceedings against him.*" (Court's italics.)

Respondent asserts that the refusal of Petitioner's requested constitutional right of counsel presents a novel feature in that this deprivation occurred during the investigative stage of the proceedings (Respondent's Brief, p. 55). It is axiomatic that a defendant in a criminal case is entitled to counsel at all stages of proceeding. Respondent does not contend that this right does not extend to the investigative stages of the case and there is no question but what this is a time when a prisoner may be more in need of counsel than at any stage of the case.

The significant feature, however, is, in these admitted facts, that Petitioner did, himself, request to call an attorney, and was told by the police that he could only do so after their investigation was over (Transcript of Record, p. 83); and that this deprivation was carried forward throughout every step of the proceedings, through the admission and use in evidence of an alleged confession taken in such circumstances, as virtually the sole basis of conviction. These facts are *not* in any substantial or real conflict.

Thus, the distinguishing feature of this case is in this admitted request and refusal of counsel and the fact that the request was during the investigative stage of the proceedings made no difference.

This case does not present a mere coincidental absence of counsel, as an incident of Petitioner's detention. He expressed his need of assistance of counsel, as shown by his request to call an attorney. Respondent, however, relies entirely upon cases wherein defendants neither requested counsel, nor were expressly refused the right to call and confer with an attorney. (E.g., *Lisenba* v. *California*, 314 U.S. 219, 62 S.Ct. 280; *Stroble* v. *California*, 343 U.S. 181, 72 S.Ct. 599. See: Justice Carter's dissent to the majority opinion in the instant case (Transcript of Record, pp. 720-722).)

Petitioner submits that his contention that such a deprivation of his requested right of counsel constitutes a denial of due process is also far from novel in its implications. For this Court to uphold this contention is strictly within the letter and spirit of the historic right of an accused to the effective assistance of counsel in all stages of the proceedings against him.

This right of counsel is not a discretionary or perfunctory provision in our concept of justice. Not only assistance, but effective assistance of counsel is an integral, vital part of due process. (*Shapiro* v. *United States*, Ct.Cl. 1947, 69 F.Supp. 205, 207; *Powell* v. *Alabama*, *supra*.) The right is so vital in our concept of justice that even proof of the prejudice in its denial need not be made with great exactitude. (*United States* v. *Venuto*, 3 Cir. 1950, 182 F.Supp. 2d 519, 522; *Glasser* v. *United States*, *supra*.)

In Petitioner's case, the time when effective assistance of counsel would have been possible was at the time he requested to call an attorney, following his arrest, and before the writing of his alleged confession (Opening Brief, p. 12, line 22 through p. 13, line 3). In refusing his request to call an attorney, the police destroyed the effectiveness of Petitioner's constitutional right of counsel.

Respondent claims concern lest this Court's finding such denial of counsel constitutes denial of due process may hamper a prosecutor who has ample direct evidence of a defendant's participation in a crime. Petitioner submits that this concern is not well-founded.

Petitioner calls the attention of the Court to the language of the California case of *People* v. *Avilez*, 86 C.A.2d 289, 194 P.2d 829:

> "Our state courts will therefore maintain this right (to counsel) absolutely and to the full extent, even when they are not forced to do so by Federal review. The protection so guaranteed is not provided by a mere 'token', 'pro forma' appearance of an attorney but *a defendant is entitled 'to the effective and substantial aid of counsel at all stages of the proceeding.'*" (Emphasis added.)

(See also: *People* v. *Lanigan*, 22 Cal.2d 569, 575, quoting with approval *Glasser* v. *United States, supra*, at 75, 76.)

The theory upholding this right of counsel is, therefore, historic and at the heart of our American traditions of liberty under law. Petitioner's contention calls for no such "sweeping declaration" as Respondent claims. Petitioner relies herein upon decisions of this Honorable Court, which hold that a defendant shall have effective assistance of counsel in all stages of a criminal proceedings against him. These decisions do not leave the way open for police to destroy this right in the investigative stage of proceedings.

Petitioner respectfully submits that this safeguard has not and will never unduly hamper state authorities, just as it has not unduly hampered federal authorities in the administration of law. In either jurisdictions, the social need of protecting this historic right of counsel is the same.

Furthermore, here, virtually the sole basis of conviction of a capital offense was an alleged confession. There was no such ample direct evidence of Petitioner's alleged participation in a crime, which would apparently be the basis of Respondent's claim of concern over the social consequences of this contention.

Petitioner's Opening Brief also sets forth substantial evidence of the careless police investigation in extremely suspicious circumstances in the testimony of certain witnesses (Opening Brief, pp. 19-21). Petitioner also testified at length, denying this crime, the specific acts written in the alleged confession, and as to the source of his knowledge of the crime being the officers' questions (Transcript of Record, pp. 159, 511-515, 520-521, 588, 595-604). The testimony of officers admits questions containing vital knowledge of the crime (Transcript of Record, pp. 74-75, 88-92, 407-409, 670-671).

Respondent contends that Petitioner has failed to discuss any such consequences of the denial of counsel as would fatally infect all regularity of the trial (Respondent's Brief, p. 57). It is submitted that the entire question here presented is in protest of the very consequences which resulted to the Petitioner by the deprivation of this right. (*United States* v. *Venato*, 182 F.Supp. 2d 519, 522.)

It is further submitted that requiring police respect for an accused's right to have assistance of counsel, particularly when requested by the accused, in the investigative stage of proceedings is consistent with both federal and state constitutions, decisions of this Court relied upon herein, and the proper administration of law enforcement. To require such respect for this right of counsel prevents just such over-zealous prosecutions as in the instant case, based by the police upon the wilful and deliberate disregard by the police of such fundamental rights of due process

essential to our concept of justice. Here, it will prevent the taking of Petitioner's life without due process of law, as a direct result of refusal by police of his constitutional right of counsel, which he requested while in their custody.

(2) This Defendant Was Denied Due Process of Law Under the Circumstances of This Case by the Admission Into Evidence of the Confession Made by Him While He Was in Custody and Was Not Allowed to Consult With an Attorney, Which He Requested to Be Allowed to Do:

For the sake of accuracy and fairness, Petitioner respectfully directs this Court's attention to the correct and complete record which shows he repeatedly, not just once, requested counsel during his interrogation by the police.

As Respondent states (Respondent's Brief, pp. 58-59), Sgt. Gotch, an interrogation officer, admitted Petitioner requested to call an attorney, named Mr. Simpson, wherein he was told he could only do so after the police investigation was over (Transcript of Record, p. 83).

In addition, using Respondent's paraphrase (Respondent's Brief, p. 35), Officer Willis, who began the conversation with Petitioner at about 6:30 p.m., testified that:

> "Either 'at that time or just when he was leaving' the defendant talked about an attorney who was a former instructor (named Mr. Simpson) '*that he thought he would like to contact some place along there*'. Willis wasn't sure whether it was 'at that time or just when he was leaving' that this was said. Willis ('*imagines*') that he 'stated it was his privilege.'" (Emphasis added.) (Transcript of Record, pp. 133, 134.)

In addition, the ruling of the trial court on People's Proposed Exhibit 29 includes in evidence everything *before*

"page 825, line 18 of the transcript" (Transcript of Record, p. 354).

Petitioner stated to District Attorney Roll in the presence of several interrogation officers of the night before: *"I'm sure that everyone here is aware of it; I just want for the record to say it, I have asked for counsel."* No refuting statement was offered by any of the interrogation officers present (Transcript of Record, p. 348).

In addition, Petitioner respectfully seeks this Court's indulgence and attention to his petition for writ of certiorari in this matter, page 5, lines 1 through 11 (Opening Brief, p. 10, lines 4 through 17), whereat Petitioner makes extended reference to the Reporter's transcript, page 1606 through page 1610, inadvertently omitted in the printing of the record. At those pages the highly significant testimony of Sgt. Hooper, an interrogation officer, pertaining to his conversation with Petitioner about his repeated requests for counsel during the interrogation of the night before, is as follows:

(WITNESS: SGT. HOOPER):

"Q. Did he say anything at that time about not wanting to answer such questions as were being posed until he had an opportunity to talk with an attorney?

"A. No, there was no discussion of an attorney. When he didn't want to answer the question he just said he would rather not answer, or rather not make a statement about that" (Reporter's Transcript, p. 1606, line 12 through p. 1607, line 21).

"Q. At any time during these periods that you have just been telling us about, did the defendant make any request for an opportunity to consult with an attorney to you?

"A. No, he never did.

"Q. Is your answer that he did not, or do you not recall that he did?

"A. He didn't make any such request in my presence or to me.

"Q. Did you ever say to the defendant at any time, 'You don't need an attorney now. The first time you need an attorney is when you go to court'?

"A. No.

"Q. Or words to that effect?

"A. No, not words to that effect. I had no discussion with him about an attorney at any time.

"Q. Well, either during this interrogation period, or directing your attention to the day of the 6th, did you ever make any such representation to the defendant that he didn't need an attorney in the investigative stages, that the first time he would need an attorney is the first time he went to court?

"Mr. Alexander: I think that is broaching upon the court's ruling" (Court's ruling above-stated on Exhibit 29).

"The Court: Objection overruled.

"The Witness: *I never had any discussion at all with the defendant about an attorney at any time.*

"By Mr. Armstrong:

"Q. If I direct your attention to the p.m. hours of the 6th of July, 1955, do you remember on that occasion at any time saying to the defendant in substance, 'You don't need an attorney in the investigative stages. The first time you will need an attorney is when you go to court.'?

"A. I didn't have any discussion with him at any time about an attorney. I don't think that I saw him in the p.m. hours of the 6th."

(The transcript of proceedings in the District Attorney's office, however, admitted in evidence for this purpose, shows the following) (Transcript of Record, pp. 349-351):

"By Mr. Hooper: I might point out one thing here, John, that this session here is an informal interview. If what you told us earlier today is true we want to go over these points so the District Attorney's Office is familiar with the case and this interview here is an informal affair and it has no particular bearing on the case. We went over it with you ourselves, both at the office and at the house and we're familiar with the facts but the District Attorney's Office is not at this time.

"John R. Crooker: I appreciate that; as you know all the way along since this investigation started I have attempted to get counsel; I have asked when I could have counsel, when I could make approaches to get counsel and I appreciate the fact that *this is reiteration of what I have already said but my interest in having counsel is the same as it has been* and I will, of course, be anxious to have counsel and I have been.

"By Mr. Hooper: In this interview, John, it doesn't serve any purpose except to acquaint the District Attorney's Office with the case. The counsel, which I agree you should have one but the first time your counsel would appear would be at your arraignment: *unless you're permitted a hearing, you don't need a counsel in a case like this.*" (Emphasis added.)

(When confronted with this impeaching testimony, Sgt. Hooper testified as follows) (Reporter's Transcript, p. 1609, line 15 through p. 1610, line 5):

"By Mr. Armstrong:

"Q. Mr. Hooper, I will ask you if you recall making this statement in the District Attorney's Office on the afternoon of July 6, 1955:

'In this interview, John, it doesn't serve any purpose except to acquaint the District Attorney's Office with the case. The counsel, which I agree you should have one but the first time your counsel will appear would be at your arraignment; unless you're permitted a hearing, you don't need a counsel in a case like this.'

Did you say those words?

"A. I may have said that. I didn't recall at the time, but I possibly said that, yes. That was in the District Attorney's Office?

"Q. I'm asking you.

"A. I think I may have said that in the District Attorney's Office."

It must be noticed that in addition to this impeaching testimony of Sgt. Hooper, none of the other officers who had interrogated Petitioner the night before, present in the District Attorney's Office, made any refuting statement whatsoever to Petitioner's statement: ". . . *as you know all the way along since this investigation started I have attempted to get counsel; I have asked when I could have counsel . . .*" (Transcript of Record, p. 350).

Respondent disregards other evidence, as above stated and relies upon the testimony of the West Los Angeles jailer, who only saw Petitioner after his alleged confession, and testified that he asked him if he wanted to call an attorney, and that Petitioner said he had no attorney to call (Respondent's Brief, p. 54) (Transcript of Record,

p. 245); in the fact of other officers testifying that Petitioner wanted to contact Mr. Simpson, a Long Beach attorney, his former instructor; and this jailer further testifying that he had told the interested officers that he "never heard him ever once say anything about that, about a request for an attorney" (Transcript of Record, p. 245), and further testifying that Petitioner had "told" his sister in the East not to come out concerning his arrest (Transcript of Record, p. 253), when all other testimony establishes that he had had no opportunity to have telephoned anyone, much less a sister in the East!

In addition, as set forth (Opening Brief, p. 6 through p. 8) Mr. Raymond C. Simpson, the attorney to whom Petitioner referred and with whom he eventually was allowed to speak, in the District Attorney's Office, with Mr. Roll monitoring the telephone conversation, and with several interrogation officers present, came forward to testify in Petitioner's behalf pertaining to his need and previous requests for counsel (Transcript of Record, p. 222 through p. 227).

Petitioner submits that these admitted facts clearly show he repeatedly, not just once, requested counsel throughout the fourteen hours of his interrogation before the writing of the alleged confession.

Respondent states that Petitioner suggests in his Brief that the only purpose of access to counsel in the instant case was for the purpose of assisting in the fabrication of facts (Respondent's Brief, p. 67). This, of course, was illustrative of the callous disregard for the right to counsel that Respondent takes and that the prosecution took at all stages of this case. This attitude of the Respondent is illustrated further by Respondent's statement, "Respondent cannot conceive what information an attorney could have given him of which he had not already evidenced

knowledge" (Respondent's Brief, p. 66). In presenting this argument, Respondent seems to be conceding the denial of counsel and at the same time asserting that a denial of counsel if of no consequence because the prosecution did not consider it to be important. If such were to be the criteria of a prisoner's right to counsel and a District Attorney's Office had no more regard for a prisoner's right than the District Attorney did in the instant case, it would be difficult to imagine a case where the prosecution would find it necessary for a prisoner to have counsel.

Advice of an attorney in criminal proceedings is, in the first place, a constitutional right. An accused's need of such assistance of counsel is well-recognized as inherent in the nature of such proceedings. Petitioner is not required to show an extraordinary need, but, moreover, the peculiar dilemma confronting him at the time he requested to call an attorney is clearly shown by his testimony at trial (Opening Brief, p. 12, line 22 through p. 13, line 3).

Petitioner not only testified that his need of counsel was for the protection of the deceased Norma McCauley (Respondent's Brief, p. 59), he testified he needed to talk with an attorney before he told "what he knew about her" (Transcript of Record, p. 623). He testified to his belief of the abortion which Norma McCauley disclosed to him on June 22, and again referred to on July 3 and 4 (Transcript of Record, pp. 508-509). He testified to his meeting and conversation, *by prearrangement*, on July 3 and 4, the morning before the crime, with Norma McCauley in her home, wherein she disclosed that someone was threatening her (Transcript of Record, pp. 471-472, 483-488); This was when the fingerprint was made, and which could not be established in time within five days (Respondent's Brief, p. 12) (Transcript of Record, pp. 503, 366); and he testified as to his whereabouts on July 4 and 5, the date of the crime (Transcript of Record, pp. 488-495, 588). These

were the intimate "details" involving his relationship with the deceased, which Petitioner testified he wanted to discuss with an attorney before divulging them.

Certainly, it is not only conceivable, but entirely reasonable that an attorney could have *advised* Petitioner to divulge those "details," no matter how intimate, if it appeared to do so might aid the investigation. An attorney could have resolved this dilemma confronting Petitioner. At least, an attorney could have *advised* Petitioner against the making of what he knew to be a "semblance of confession" (Transcript of Record, pp. 600, 588), having the evidenciary knowledge to so advise.

Respondent attempts to make much of Petitioner's educational background (Respondent's Brief, pp. 4, 66). It is noticed in passing, Petitioner had to repeat the beginning first year law courses, the extent of his training in law (Transcript of Record, pp. 528, 529). He had had "very, very little" training in such matters relating to evidence (Transcript of Record, p. 611), as every attorney may attest from his own first year of training. Advice of counsel would have been based upon competent knowledge and experience in such matters as rules of evidence.

Certainly, then, Petitioner's peculiar need of counsel was entirely undiminished by virtue of his extremely limited training in law, *and his constitutional right to the effective assistance of counsel absolutely undiminished.*

Refusal of Petitioner's request for counsel, which was repeatedly made, not just once, was *not* the only evidence of the coercive means used to extract the alleged confession. Respondent apparently has a gross misimpression of the record (Respondent's Brief, p. 59).

To comply with due process, lip-service testimony of the persons obtaining the confession, that the same is volun-

tary, is not sufficient, if the surrounding circumstances throw doubt upon its authenticity. (See *People* v. *Thomilson*, 400 Ill. 555, 81 N. E. 2d 434, 441; Cf. Syllabus, *State* v. *Cooper*, 67 A. 2d 298, 299, 2 N.J. 540; *Lyons* v. *Oklahoma*, 322 U.S. 596, 64 S.Ct. 1208, 1212.)

As set forth above, Petitioner repeatedly requested counsel, and was refused by the interrogation officers, which is submitted as being inherently coercive.

On the question of physical coercion, the officer accused of striking and threatening Petitioner did deny the accusation made at trial. However, it is significant to notice, this is the same officer, Sgt. Hooper, who denied any conversation or knowledge whatsoever about Petitioner's requests for counsel, until he was called to admit otherwise, as stated hereinabove, by his *recorded statements* in the District Attorney's Office (Transcript of Record, pp. 349-351). Similarly, the evidence of his tacit admission of his use of physical coercion, i.e. "*I Don't Think We Hurt You*" (Transcript of Record, pp. 213, 214) (Opening Brief, p. 10, line 18 through line 26), controverts his own testimony at trial. Neither Sgt. Hooper at trial, nor any of the officers present in the District Attorney's Office at the time of this accusation and this tacit admission, offered any denial of its having been made and it stands unrefuted.

This, in effect, corroborated Petitioner's testimony that such coercion was used. It must be noticed that where any physical force is present, "there is no need to weigh or measure its effect upon the will of the individual victim." (*Stein* v. *New York*, 346 U.S. at 182, 73 S.Ct. 1077.)

There is clear, undisputed evidence of the use of psychological coercion. Petitioner was in constant company of his interrogators for fourteen hours, until 3:30 in the morning following his arrest before the writing of his alleged

confession was completed (Transcript of Record, pp. 126, 113).

This fourteen hours is a period of prolonged interrogation. He was held at his residence for about three hours (Transcript of Record, pp. 126, 68), where there was some questioning (Transcript of Record, pp. 670, 673, 683). He was held at Central Station for about four and one-half hours (Transcript of Record, p. 69), where the conversation began at about *6:30 p.m.* (Transcript of Record, p. 133), in which several officers participated (Transcript of Record, pp. 83, 85-86, 103, 133). He was held at West Los Angeles Station, before the writing of the alleged confession, for about five hours (Transcript of Record, pp. 87, 113), where he was questioned by a group of officers (Transcript of Record, pp. 72-77, 88-92, 109-112, 119).

He continuously denied accusations of the crime (Transcript of Record, pp. 88-89, 74-75); and he continuously expressed to the officers his unwillingness to answer questions (Transcript of Record, pp. 110-111, 111-119, 268); while it is admitted he asked to call an attorney (Transcript of Record, pp. 83, 134); and there was no indication that this fourteen hour interrogation would end, unless Petitioner would make some statement (Transcript of Record, pp. 511, 512).

He expressed his fear of his interrogators to Lt. Armstrong (Transcript of Record, p. 215), to Mr. Simpson in the officers' presence (Transcript of Record, pp. 221-227), and to Deputy District Attorney Alexander (Transcript of Record, p. 233).

The record indicates absolutely no previous experience on Petitioner's part in such police methods.

These above facts clearly encompass the elements of psychological coercion recognized by this Court. (*Ash-*

craft v. *Tennessee*, 322 U.S. 143, 150; *Leyra* v. *Denno*, 347 U.S. 596; *Fikes* v. *Alabama*, 352 U.S. 191, 77 S.Ct. 281.)

With such admitted facts, before this Court, Petitioner respectfully submits that incorrect interpretation is placed upon the decisions of this Court cited by Respondent (Respondent's Brief, pp. 60, 61, 62, 63, 64, 65).

In *Lisenba* v. *California*, 314 U.S. 219, 62 S.Ct. 280, there were no such admitted facts of defendant's request and refusal of counsel, tacit admission of the use of physical coercion, or undisputed evidence of psychological coercion, directly affecting the making of a confession, as in Petitioner's case. There, substantial conflict did exist in the evidence as to voluntariness of a confession.

Similarly, in *Stroble* v. *California*, 343 U.S. 181, 72 S.Ct. 599, defendant did not himself request counsel, or indicate any desire for counsel. There, defendant was not making a statement reluctantly; he continued to confess even after conferring with an attorney.

In *Lyons* v. *Oklahoma*, 322 U.S. 596, 64 S.Ct. 1212, the voluntariness of one of defendant's confessions upon which conviction was based was not even contested.

Respondent also places great reliance upon the case of *Stein* v. *New York*, 346 U.S. 156, 73 S.Ct. 1077 (Respondent's Brief, pp. 55, 65, 67, 68, 73). There, defendants were seasoned malefactors, experienced in the ways of crime and methods of police. Defendant Stein bargained with the authorities for his confession. There, a prosecutor did have ample, and in fact abundant direct evidence, without the confession. Nor were there any such admitted facts of request and refusal of counsel, tacit admission of physical coercion, or undisputed evidence of psychological coercion, as in the instant case.

Respondent does not account for the distinguishing facts of the instant case, which are *not* in conflict. Not only is there the tacit admission of Petitioner being struck and threatened, and undisputed evidence of psychological coercion, but, here, Petitioner was not only uncounseled; he requested to call an attorney and was told he could not do so until the police were through with him.

As this Court did say in *Lyons* v. *Oklahoma, supra,* 322 U.S. 596, 64 U.S. 1208:

> "The voluntary or involuntary character of a confession is determined by a conclusion as to whether the accused, *at the time he confessed,* is in possession of 'mental freedom' to confess or to deny a suspected participation in a crime. When conceded facts exist which are irreconcilable with such mental freedom regardless of the contrary conclusion of the triers of fact, whether judge or jury, this court cannot avoid responsibility for such injustice by leaving the burden of adjudication solely in other hands." (Emphasis added.)

The continuing portion of the Court speaking in the *Lyons* case, *supra,* cited by Respondent (Respondent's Brief, p. 63), does not apply in the instant case, *because there is not substantial dispute as to the acts of coercion upon which Petitioner relies,* as set forth hereinabove.

Petitioner contends that when an accused himself requests counsel it appears manifest that he lacks that required "mental freedom" for a confession to be deemed voluntary. By requesting counsel he shows his need of counsel and his lack of mental freedom. Moreover, the peculiar dilemma confronted Petitioner, as regards the intimate details from his relationship with the deceased Norma McCauley when accused of responsibility for her death,

further emphasizes his lack of that "mental freedom". Thus, the police refusal to allow him to consult with an attorney, when he requested to do so, was coercive.

Respondent complains at Petitioner's citing of the case of *Fikes* v. *Alabama, supra*, 352 U.S. 291, 77 S.Ct. 281 (Respondent's Brief, p. 66). Respondent again calls attention to Petitioner's educational background, attempting to differentiate a principle of law on the basis of defendant Fikes, an uneducated person, and this background of Petitioner.

The distinguishing facts are that Petitioner was not only uncounseled, but he requested to call and consult an attorney and was told by the police he could not do so until the investigation was over. Only after fourteen hours in such circumstances, with no sign of termination, did he write an alleged confession. These admitted facts, added to the tacit admission of physical coercion, and undisputed evidence of psychological coercion, show the even more serious deprivation of constitutional rights than in the *Fikes* case, *supra*.

It is Petitioner's contention that the instant case is a stronger case than the *Fikes* case for the reason that the Petitioner, with his educational background and conceited mental superiority over the defendant Fikes, had reason to believe that police officers in an enlightened community, such as Los Angeles, would respect a citizen's rights. The callous disregard of the police officers for these rights would lead such a person as the Petitioner to have greater fear and apprehensions than would a person who is informed as to rights and had no reason to expect law abiding conduct.

It must be conceded, however, the record is voluminous. Some further pertinent facts may serve to show wherein the misimpression of much admitted facts have arisen.

Respondent attributes the following as testimony of Sgt. Gotch (Respondent's Brief, p. 33):

> "From the time Sgt. Gotch came into the defendant's room in the early afternoon until he left him after eleven o'clock, he never heard the defendant say he would like to call an attorney" (Transcript of Record, pp. 105-106).

The witness testifying at these pages, however, is not even Sgt. Gotch, but Officer Stambler who is testifying as to what he reputedly did not hear (Transcript of Record, pp. 105-106). As for Sgt. Gotch, his testimony admits Petitioner requested to call an attorney wherein he was refused (Transcript of Record, p. 83).

Respondent quoted this above misimpression verbatim from Respondent's Brief in the court below at page 20:

Respondent states (Respondent's Brief, p. 31):

> "Lt. Armstrong's best recollection is that the first time he heard that the defendant would like to call an attorney was in Mr. Roll's office the next day, following the confession, he did not hear the defendant ask for an attorney in his presence before that time" (Transcript of Record, pp. 75, 76).

Respondent does not add, however, the significant fact that Lt. Armstrong did not refute Petitioner's statement at that time in Mr. Roll's office, to wit: " . . . as you know, all the way along since this investigation started, I have attempted to get counsel, I have asked when I could have counsel . . . " (Transcript of Record, p. 350). Nor does Respondent add the significant fact that, although the above statement was *wire-recorded* in the office of the District Attorney of the County of Los Angeles, Lt. Armstrong chose not to use available equipment to record the interro-

gation of Petitioner in his office the night before (Transcript of Record, pp. 237, 238).

Instead, Respondent has again quoted verbatim from Respondent's Brief in the court below at page 17, without those significant additional facts.

Respondent states (Respondent's Brief, p. 29):

> "Officer Gravante first saw defendant at approximately 10:30 p.m., July 5, 1955, at West Los Angeles Station. . . . He next saw him at approximately 1:15 a.m., on July 6th . . . with four other officers . . . ."

Respondent does not add, however, the fact that at least two of these "other officers" testified that Officer Gravante questioned Petitioner continued during the 11:00 to 12:30 period with them (Transcript of Record, pp. 72, 72, 108) *not* the 1:15 period as Sgt. Gravante testified was the "next" he was Petitioner. The significance is that such discrepancies in the testimony of these officers renders particularly suspect their lip-service testimony that the alleged confession was "free and voluntary" in the coercive circumstances of this case.

Again, Respondent has quoted verbatim from Respondent's brief in the court below at page 15, without these irreconcilable additional facts.

Similarly, Respondent states (Respondent's Brief, p. 32):

> "Officer Gotch did not know the cause of Norma McCauley's death up to the time that Exhibit 18 was completed, and did not learn of it, aside from the confession of defendant, until sometime on July 6th after completion of the autopsy" (Transcript of Record, pp. 96-97).

However, the facts were that Sgt. Gotch directed removal of the body from the scene, on the morning of July 5th, and observed the body was "covered with blood" (Transcript of Record, pp. 99, 100) (and also directed detailed photographing of the body at the scene, Reporter's Transcript, pp. 291-298); and that Captain Stilson, of the police crime lab, who was with Sgt. Gotch, both at the scene and at Petitioner's residence at that time, testified that, "*We were looking for any sharp weapon that might have been used in the crime that we had come from*" (Transcript of Record, p. 408).

The significance of this testimony is that Petitioner testified the officers' questions were the source of his knowledge of the crime (Transcript of Record, pp. 157, 159). In addition, Lt. Armstrong admitted Petitioner was asked about a "*knife*", and about "*stabbing*" and killing the deceased, and about being in the home on the date of the crime (Transcript of Record, pp. 75, 76).

It is apparent that with such omissions and with such voluminous record, a court may be subject to receive such a misimpression of the admitted facts or record, not in conflict. Petitioner submits that this is apparently what occurred in the court below, in spite of his earnest efforts to clarify these facts. Thus, Petitioner respectfully directs attention to the record, as set forth hereinabove, in order to remedy such a misimpression.

As Petitioner contends in his Opening Brief (Opening Brief, p. 11, lines 20-25), this Court is not bound by the conclusions of the judge or jury or the court below as to such admitted circumstances as in this case, which are irreconcilable with a voluntary confession, and demand that an alleged confession in such circumstances be deemed to have been coerced and therefore was inadmissible.

(*Ashcraft* v. *Tennessee, supra,* 322 U.S. 143, 64 S.Ct. 921; *Lyons* v. *Oklahoma, supra,* 322 U.S. 596, 64 S.Ct. at 1212.)

The record before this Court shows that the testimony and other evidence in the voir dire inquiry at trial established the facts, not in any substantial conflict, that Petitioner requested to call and consult an attorney, Mr. Simpson, following his arrest at his residence, without warrant, on July 5, 1955, a regular business day; and that the police told him that he could not call his attorney until after their investigation was over, which extended continuously for fourteen hours into the early morning hours, until after Petitioner wrote an alleged confession of the murder of the deceased, Norma McCauley. The record discloses abundant evidence, as set forth hereinabove, from which it must be concluded that he repeatedly, not just once, sought such assistance of counsel before this alleged confession was written.

On the basis of such admitted facts of denial of his constitutional right of counsel, and evidence of the tacit admission of the use of physical force, by the accused officer, Sgt. Hooper, and the undisputed evidence of elements of psychological coercion, Petitioner objected to the admission of the alleged confession into evidence (Transcript of Record, pp. 278-300). Nevertheless, this alleged confession was submitted in evidence to the jury (Transcript of Record, p. 300).

Upon conclusion of the evidence, Petitioner then requested that the jury be instructed to "absolutely disregard" this purported confession, upon proof of the facts of this denial of counsel (Opening Brief, p. 15, lines 3-12).

The trial court rejected and modified the Instruction as requested, instructing the jury, instead, that these facts of the denial of requested counsel were only "circumstances you *may* consider" in determining whether the alleged con-

fession was voluntary or involuntary (Opening Brief, p. 15 through p. 17, line 4).

The only significant and equivocal evidence linking the defendant with this crime was the alleged confession, surrounding which there were extremely suspicious circumstances, as set forth hereinabove, and in his Opening Brief (Opening Brief, p. 19 through p. 21).

The California Supreme Court in the opinion affirming Petitioner's conviction made reference to the fact that Petitioner had requested counsel in only one instance (*People v. Crooker*, 57 Cal. 2d 348, 303 P. 2d 753, Transcript of Record, p. 714), and held other evidence of coercion to have been in conflict (Transcript of Record (Opinion below) 713). Thus, the court below apparently received the misimpression of the record, as set forth hereinabove. On this basis, the court affirmed the conviction, with Mr. Justice Carter dissenting.

No such compelling admitted facts were before the court in *Rogers v. Superior Court*, 46 Cal. 2d 3, 10, 291 P. 2d 929, cited by Respondent (Respondent's Brief, p. 68). In the instant case we do not find a "mere detention and police examination", or mere delay in an arraignment, as in *Brown v. Allen*, 344 U.S. 443, 73 S.Ct. 397, 417, cited by Respondent (Respondent's Brief, p. 69). Here, the admitted facts present far more than a "lack of counsel" as a coincidental part of prolonged interrogation, as in *Gallegos v. Nebraska*, 342 U.S. 55, 63-65, 72 S.Ct. 141, 146-147, cited by Respondent (Respondent's Brief, pp. 70, 71).

In none of these cases relied upon by Respondent was there evidence that defendants admittedly requested counsel; in none of these cases do we find a defendant admittedly and overtly being told by police he could not call and obtain advice and assistance of an attorney until the police were

through with him; such as are the admitted facts, not in substantial conflict, in the case now before this Court.

As this Court did say in *Stroble* v. *California*, 343 U.S. at 197 and 198:

> "As to the refusal of the prosecutors to admit counsel during their interrogation of Petitioner, counsel stated that he had come to the District Attorney's office at the request of Petitioner's son-in-law *merely to inquire of Petitioner as to his guilt. At no point did Petitioner himself ask for counsel.* In the light of these facts, the District Attorney's refusal to interrupt the examination of Petitioner, which had been proceeding for almost an hour, so that counsel could make inquiry for Petitioner's son-in-law, does not constitute a denial of due process . . . " (Emphasis added.)

Now, this Court is presented with a fact situation which this language indicates was contemplated in review of the *Stroble* case, *supra*.

Here, the admitted facts, not in substantial conflict show the coercive circumstances of incommunicado police interrogations condemned in *Ashcraft* v. *Tennessee*, *supra*; *Leyra* v. *Denno*, *supra*; *Chandler* v. *Fretag*, *supra*; *Fikes* v. *Alabama*, *supra*; and relating to *Williams* v. *North Carolina*, 317 U.S. 287; and *Stromberg* v. *California*, 282 U.S. 29, cited (Opening Brief, p. 18, lines 20-30) as concerns the alleged confession as virtually the sole basis of conviction.

Here, Petitioner did himself repeatedly request to call and consult an attorney during his interrogation by police, and, moreover, he had a particular good faith and real need of such counsel at that time.

As this Court said in the *Glasser* case:

> "The right to have assistance of counsel is too fundamental and absolute to allow courts to indulge in nice calculations as to the amount of prejudice existing from its denial."

(*Glasser* v. *United States*, *supra*, 315 U.S. 60, 62 S.Ct. 457; *People* v. *Robinson*, 42 Cal.2d 741, 745, 746.)

The decisions of this Court, following *Powell* v. *Alabama*, *supra*, have continued to uphold this right of counsel in various stages of criminal proceedings. (Cf. *Chessman* v. *Teets*, 77 S.Ct. 1356; *Moore* v. *Michigan*, *supra*, No. 42, 355 U.S. ——, 26 N.W. 4023.)

Such police refusal of an accused's request to call and have assistance of counsel, as in the circumstances of Petitioner's case, in the *investigative stage* of criminal proceedings, fatally infects all stages of the proceedings. Here, such police refusal destroyed the effectiveness of Petitioner's right of counsel at all stages of the proceedings against him, under the Fourteenth Amendment of the Federal Constitution.

On the basis of the foregoing, Petitioner respectfully submits that his conviction constitutes a deprivation of his constitutional rights of due process of law and demands reversal by this Honorable Court.

Respectfully submitted,

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Attorney for Petitioner

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IN THE

Supreme Court of the United States

October Term, 1957
No. 178

JOHN RUSSELL CROOKER, JR.,
Petitioner,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,
Respondent.

On Writ of Certiorari to the Supreme Court of the State of California.

RESPONDENT'S BRIEF.

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RESPONDENT'S BRIEF.

Opinion Below.

The opinion of the Supreme Court of the State of California is reported in 47 Cal. 2d 348, 303 P. 2d 753.

Jurisdictional Statement and Proceedings in the Courts Below.

Defendant and petitioner John Russell Crooker, Jr., was charged in an Information filed by the District Attorney of the County of Los Angeles on August 3, 1955, with the crime of murder and it was alleged that he did murder Norma McCauley on or about July 5, 1955, in violation of California Penal Code, Section 187.

Defendant was arraigned on August 22, 1955, with his counsel present, entered a plea of Not Guilty and waived

time for trial. The matter proceeded to trial before a jury which, on December 9, 1955, returned a verdict finding the defendant, John Russell Crooker, Jr., guilty of murder, a felony, as charged in the Information, and found it to be Murder of the First Degree. Thereafter, defendant's motions to set aside the verdict and for a new trial were denied and on December 12, 1955, the judgment was pronounced sentencing the defendant to suffer the death penalty for the offense of Murder of the First Degree. An automatic appeal from the judgment was taken to the California Supreme Court and the judgment and order were affirmed on November 21, 1956. (*People v. Crooker,* 47 Cal. 2d 348, 303 P. 2d 753.) A petition for rehearing was denied December 19, 1956. A petition for certiorari was filed April 19, 1957, and certiorari was granted June 10, 1957. (*Crooker v. People of the State of California,* 354 U. S. 908, 77 S. Ct. 1300.) The jurisdiction of this Court rests upon 28 U. S. C. 1257(3).

Questions Presented for Review.

Petition for writ of certiorari to the Supreme Court of the State of California was granted by this Honorable Court, limited to the questions:

1. Was the defendant denied Due Process of Law by the refusal of the investigation officers to allow him to consult with an attorney upon demand being made to do so while he was in custody?

2. Was the defendant denied Due Process of Law by the admission into evidence of a confession which was taken from him while in custody and after he had been in custody for 14 hours and had not been allowed to consult with his attorney?

Crooker v. People of the State of California, supra, 354 U. S. 908, 77 S. Ct. 1300.

Statement of Facts.

A. In General Concerning the Crime.

On the morning of July 5, 1955, the body of Norma E. McCauley was found in the bedroom of her home by her five year old son. He came back and said to Laurie Dromtra (a maid), "Laurie, you better go in; Mommie is in a mess." Laurie Dromtra looked at the deceased, who was lying on the couch with her face down, and saw blood on her ankles, feet and legs. Mrs. McCauley had an article around her neck that looked like the wrap she wore the night before to a barbecue dinner [Tr. of R. pp. 15-16]. Laurie Dromtra called the brother of the deceased, one John Thompson [Tr. of R. p. 16].

John Thompson arrived at the home of the deceased, 1100 Somera Road, Los Angeles, at approximately 8:20 in the morning. He found his sister lying face down on the chaise lounge. He knew she had been murdered because blood was splattered all over the room [Tr. of R. p. 57]. He noticed that she had something turned around her neck, as if she had been choked to death. Mr. Thompson noticed blood on the chaise lounge and a splatter of blood on the wall [Tr. of R. p. 58].

Dr. Frederick D. Newbarr performed an autopsy on the body of Norma E. McCauley on July 6, 1955. It was his opinion that the cause of death was massive hemorrhage due to a stab wound of the chest and other conditions, with strangulation [Tr. of R. p. 2]. The deceased was a Caucasian female, measuring four feet, eleven and one-half inches in height and weighing 96 pounds. Her stated age was 33 years [Tr. of R. p. 3]. The doctor found approximately eleven wounds on the body of Mrs. McCauley [Tr. of R. pp. 3-4]. He found a depression

in the skin of the right neck and an abrasion across the mid portion of the anterior neck [Tr. of R. p. 5]. It was the opinion of the autopsy surgeon that the wounds described by him were defense wounds [Tr. of R. p. 6]. The doctor was of the opinion also that the strangulation took place at the time Mrs. McCauley was dying [Tr. of R. p. 7]. It was also his opinion that the wounds were actual evidence of a struggle [Tr. of R. p. 10].

Defendant (and petitioner) John Russell Crooker, aged 31 years [Tr. of R. p. 170], had studied one academic year of law at U. C. L. A. and had had the same courses at Southwestern [Tr. of R. pp. 528-529]. He had studied criminal law [Tr. of R. p. 611].*

Crooker had entered Pepperdine College in 1950 and graduated from that institution in 1953, receiving a Bachelor of Arts degree [Tr. of R. p. 442].

Crooker was hired by the McCauleys in June, 1953, to perform houseboy duties, ranging from baby sitting to bartending [Tr. of R. p. 443]. He entered U. C. L. A. Law School in the fall of 1953.

The defendant is five feet, eleven and one-half inches tall. He weighs approximately 174 pounds.

Louis J. Socha, a taxicab driver for the Yellow Cab Company, on July 4, 1955, in the late afternoon (he went to work about ten minutes to five o'clock) received a radio call to proceed to the U. C. L. A. Law Building. This occurred as he was leaving the garage in Beverly Hills [Tr. of R. pp. 59-60].

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*Defendant was able to explain to the polygraph operator that the polygraph was not valid for court use unless the attorneys stipulated [Tr. of R. p. 134; see Argument, II, *infra*.]

He proceeded to that location; a man came across the lawn who said he was the one who had called the cab. He then got in the cab and Socha drove to Somera Road at the passenger's direction. Somera Road has a dead end at the 1100 block; the cab driver proceeded to that location, turned around, proceeded slowly, and then was directed to stop in front of a particular house. The cab driver identified Exhibit 10 (a photograph of the McCauley home) as showing the house at which he stopped [Tr. of R. pp. 61-62].

The passenger paid his fare, got out of the cab and crossed towards the home shown in Exhibit 10. This occurred about 5:30 p.m. The passenger said that he was going to look for a home for rent. He was "Mr. Crooker," the defendant [Tr. of R. pp. 62-63].

B. Testimony of Crooker as to Events Preceding the Crime.

John Russell Crooker testified that his relationship with Norma McCauley changed from that of employee, to a feeling of mutual love, in the fall of 1953 [Tr. of R. p. 447].

When the defendant moved to the apartment at 5128 Marathon Street, a lamp and a chair were provided by the deceased [Tr. of R. p. 449]. The defendant moved there on September 11, 1954.

From that time on they "would see each other" three times a week; "sometimes once a week"; on the average of at least twice a week. On occasions she left money there [Tr. of R. p. 451].

Crooker testified that at about 10:30 or 11:00 p.m., July 3, 1955, he parked his car near the deceased's

home, stood by a tree on the grounds of her home, watched a car drive by and stop for three quarters of an hour, during which time the defendant "got up on that branch of the tree." The car left while he was trying to get a view of it. He fell out of the tree and hurt his hand on the rocky ground underneath the tree [Tr. of R. pp. 472-475].

The defendant waited in the vicinity until about 2:00 or 2:30 a.m. He then entered the house and went into the children's room [Tr. of R. p. 480].

He went into the closet marked "F" on the diagram. He wanted to smoke and found a glass on the play shelf and did smoke by the window. The glass was People's Exhibit 30 [Tr. of R. pp. 480-481].

When he was hiding in the closet and using the glass as an ashtray, he also put urine in it because he felt it would be too noisy to use the bathroom. He asked the deceased to empty it. He didn't do it himself because ". . . (w)e were very nervous about the time of day and wanted to conclude this meeting" [Tr. of R. p. 503].

The deceased and the defendant went into her bedroom nd talked until about 6:00 o'clock [Tr. of R. p. 483].

The defendant then left and went to his home and returned to the vicinity of the McCauley home the same day about 2:30 or 3:00 in the afternoon [Tr. of R. pp. 488-489].

After observing the deceased and the Thompson home for a time, he drove "down to U. C. L. A." to the parking lot [Tr. of R. p. 489].

He then called a cab and directed the driver to take him back to 1100 Somera Road, which he did [Tr. of R. p. 490].

The defendant waited in the vicinity of the deceased's house until about 9:30 at which time he went to a house under construction across the street from the deceased's home [Tr. of R. p. 491].

He finally left that place about a quarter to 1:00 on the morning of the 5th.

At 12:30, two cars came to the McCauley house. One of the cars went into the garage. He thought he saw the deceased and "someone who was with her." He heard the front door close. He heard a car drive away. He then walked down the hill from where he could see the kitchen. He thinks that he heard the phone. He saw the deceased at the phone in the kitchen at the bar [Tr. of R. p. 492].

He then returned to the house under construction where he stayed until a quarter to 1:00 at which time he walked down to U. C. L. A. [Tr. of R. p. 494].

Crooker testified that from the time the cab driver dropped him off on the evening of July 4th and the early morning hours of July 5th, he did not go inside the McCauley home; he did not go inside the deceased's bedroom; he did not kill Norma McCauley.

The defendant told the officers that he had driven to the beach on July 4th and that he had hurt his hand separating tangled bumpers of a car. This was not true but he said that because he didn't want to tell them about Norma McCauley. The reason for this was, "Because it involved things that I did not want to discuss with anyone until I found out what was happening" [Tr. of R. p. 501].

C. The Cross-Examination of Crooker With Reference to the Crime.

Defendant and deceased had quarrels from time to time; during the month of June, he told her that he was going to write to her mother and that he was going to talk to her mother about their relationship and to ask her mother to intercede "in what I thought was troubling Norma" [Tr. of R. pp. 529-531].

Defendant was not "going to tell Norma's mother" of his "intimacies" with deceased [Tr. of R. p. 531].

Defendant was "always anxious" about his relationship towards deceased and "it was very intense in the month of June" [Tr. of R. p. 532].

Deceased did not express a desire to break off her relationship with defendant but he suspected that she was trying to do so [Tr. of R. p. 533].

During the month of June defendant sent a telegram to deceased telling her that he had tried to contact her and that if he was unable to contact her by the following day, he would "proceed without further consideration." By the words last quoted, he was referring to contacting her mother [Tr. of R. pp. 541-542].

During the early part of June, defendant received approximately $300.00 in cash from deceased. Previous to receiving the money, he had mentioned to her "about going back to Maine" [Tr. of R. p. 544].

On or about June 4th (although defendant is not sure of the date) defendant wrote a letter to deceased stating:

> "As it is, I am aware of your intentions. You made them abundantly clear to me, especially after hearing the first writing of the context of this letter, you made the fact crystal-clear that you intended to

attempt to purge every breath of our love from your life, and you mean to do this despite any effort or caution which I may direct toward you." [Tr. of R. p. 549.]

By June 4, 1955, the deceased had made it "abundantly clear" by her demeanor, her "nervousness about our relationship, the strained feeling which she expressed to me made me feel that she had ended the relationship" [Tr. of R. p. 550].

In the same letter the defendant stated that if deceased did not "give expression to the bond" which existed between them, he would write to her father, mother, and brother, separately, stating that he would explain their love and that he was going to explain that he is her "husband in fact," and tell them,

". . . the moral course and if it isn't pursued I can no longer consider myself singly responsible before God, society, or myself, for the past, the present, or the future, and I will be relieved of a great burden." [Tr. of R. pp. 550-551.]

Defendant did not know (at the time of his testimony) what he meant by "moral course" in the letter. He does not know whether he was referring to marriage. He could not marry her because he was married [Tr. of R. p. 551].

When the defendant stated, on direct examination, that he accepted money from the deceased believing that if his "plans do not materialize," he would repay her, he meant by the "plans" that they expected that they would marry. He did not take any steps toward getting a divorce from his wife, nor did he keep any records of the money he received from the deceased "so that (he) could repay her" [Tr. of R. p. 554].

The defendant, on the witness stand, read the letter previously referred to as having been "mailed to Norma McCauley on the 4th day of June, 1955." He testified that he started the letter "My dear wife" and finished the letter, "Your husband, John." He received a sum of $300.00, approximately "after he had sent the letter" [Tr. of R. p. 555].

In the conversation in the early morning hours of July 4th, the deceased said that someone had found out about the relationship between defendant and deceased, but she said that she didn't know who the person was [Tr. of R. p. 574].

On that occasion defendant promised deceased that he would never see her again [Tr. of R. p. 575].

A promissory note dated June 1, 1954, was marked Exhibit 38 for Identification, and later received in evidence [Rep. Tr. p. 1637], and shown to the defendant; defendant was asked if that was the instrument he referred to when he previously testified that "she tore it up." He stated that it was not; but that he had never written more than one "evidence of debt for the sum of $450.00" which he handed to Norma McCauley [Tr. of R. pp. 604-605]. ". . . (i)t could only be one note" [Tr. of R. p. 606].

D. Other Facts Regarding the Crime.

Testimony was received that at the time of defendant's arrest he had scratches on his person, particularly on his neck. Color photographs of defendant's hands and face were identified and received in evidence. Defendant's story was that he hurt his hands separating tangled bumpers of automobiles [Tr. of R. p. 501]. He said that the injuries to his neck and chin were the result of shaving [Tr. of R. p. 73]. With reference to the route of the

alleged accident, the defendant preferred not to answer questions of the investigating officers [Tr. of R. pp. 73-74].

After the defendant had confessed the crime he was asked if he would return and re-enact what had occurred [Tr. of R. p. 304]. When defendant and the officers arrived at the home of the deceased, defendant indicated a door by which he said he had entered the home [Tr. of R. p. 306]. They went into the children's bedroom and defendant was asked to point out where he had hidden in that room. Defendant said that he had hidden in a closet. Defendant directed the officers from the nursery down the hallway and into the room which had been occupied by Norma McCauley. The dresser was indicated where the defendant said he found the knife [Tr. of R. p. 307]. Defendant said that he started to talk to the deceased and that she appeared to be falling asleep and not paying attention to him. He said that he had gotten up from the chaise lounge and had gone to the bathroom and that on his return he found the knife; that he wanted to continue the conversation in trying to effect a reconciliation and that she was still asleep; that he put his hands around her throat and she awoke and began to struggle and let out a scream. Defendant said that he put his hand over her mouth, reached into his pocket and pulled out the knife and pushed it in her. He said that he stabbed her a number of times and that he used the clothing that had been around her shoulders, tied it around her neck and choked her with it [Tr. of R. p. 308]. Defendant told the officers that he stayed in the room for approximately one hour; that he wiped the knife off with his handkerchief and put it back in his pocket. He said that he had taken the car keys from the purse and some money. He said that

he walked back to his car at U. C. L. A. [Tr. of R. pp. 308-309]. He said that, to the best of his knowledge, he had apparently thrown the knife and keys away.

There was testimony received that a latent fingerprint was found on a glass on the upper shelf in the clothes closet in the children's nursery. The glass had a yellow fluid with dissolved cigarette butts in it. There was testimony that it could have smelled like urine; it had a pungent odor [Tr. of R. p. 360]. It was a "fresh print," although it was hard to estimate the time it was placed there [Tr. of R. p. 365].

It was stipulated that the print found on the glass in the closet was the defendant's fingerprint [Tr. of R. pp. 373-374].

Testimony was also received by the trier of fact that the deceased, Norma McCauley, had expressed a fear of John Crooker to friends; that he had threatened to kill her if she did not go out with him. That in June, 1955, the deceased called the police and said that the call was regarding the defendant. No arrest was made of the defendant.

E. The Confession.

Frank Gravante, a police officer [Ex. 18 having been received in evidence subject to the jury passing on the question of its free and voluntary nature] testified concerning the making of the confession and was asked to read the document to the jury [Tr. of R. p. 301]. It read:

> "I, John Crooker, on Monday, July 4, 1955, attempted to communicate with Norma T. McCauley to talk with her and discuss the reasons and feelings for her rejections of our close and intimate relationship of nearly two years standing. As exactly as I

can recall the following facts constituted the sequence of events which culminated in her death. I left my place of residence at approximately 3:00 o'clock p.m. and drove toward her residence. I may have stopped for gas on the way and arrived at the entrance of Bel Air at approximately 4:00 o'clock. I drove directly up past her home, saw her car in the garage and saw her two eldest children playing on the neighbor's lawn. Realizing the futility of continuing my attempts to talk with her at that time, I drove back down past her house, by her parents' residence, stopped to note some activity of bathers at their pool, and then proceeding to a vantage point on that side of the canyon. From there I watched until she drove down the road toward her parents' home.

"I then drove down to the Stone Canyon Drive entrance to Sunset, up the west entrance again and past her home again. I then drove down to the U. C. L. A. parking area and called a Yellow cab and was driven to her residence. I went around the house to the rear and entered by the door at the children's room. Then I waited until she returned with the children in the early evening hours. I hit (sic) in a closet in the children's room, waiting until they were asleep. Norma came home about 12:00 or 1:00 o'clock a.m. She was followed home by some other car. The other car's occupant waited until she closed her garage door and went around, opening her front door, and then drove away.

"I waited in the children's room until she was in her own bedroom. Then I opened her door, which was ajar. Norma was stunned to see me but she remained remarkably calm and self-contained. I, on the other hand, was extremely nervous and generally unable to make myself realize that I was there in her

room and had taken the means described to see her. We talked for over an hour. Norma had been out, had some cocktails and felt sleepy. I tried again, as I had tried many, many times before by telephone and by letter to get her to tell me her reasons and feelings for leaving me. I told her that I could not believe that my threats were the answer. But Norma would not talk about it. I sat near her on the chaise lounge, smoking one cigarette after another and every few minutes going close to her to see whether or not she was really sleeping, and I think she was at least dozing. And I didn't know what to do. For days and days I had not known what to do. I had tried threats and coercion and profession of my feeling for her. She had rebuffed all my attempts and now she was going to sleep.

"On the dresser by the door to her bedroom were a child's toy revolver and other things. I found a kitchen knife about ten inches long with the blade about six inches. I took the knife and went back to the chaise lounge. Then I put the knife in my coat pocket and knelt beside her for what seemed to be a long time. She was asleep. I took her throat in my hand and she awoke and started to scream. I heard the maid, so I reached the knife in my pocket while holding my hand over her mouth. Then I hit her with the knife and pushed and pushed on it but she still made sounds and struggled on the lounge. I choked her more with some clothes around her throat and after a long time she was still and the house was still, and I couldn't realize that Norma was gone. I took the knife, her car keys, and some money and thought I must take her car and go, but I walked and walked and walked. The dawn was coming when I reached my car, got in, drove home,

took off my clothes and threw them into the incinerator. I went to bed and must have slept some because shortly before noon I couldn't sleep any more. I just waited for time to run out.

"Somewhere along the way I must have thrown out her keys and the knife because I didn't have them in the things I threw in the incinerator. I took some money from her purse and her keys to her car and the knife with me.

"John R. Crooker, Jr." [Tr. of R. pp. 301-303.]

(1) Cross-Examination of Defendant With Reference to the Confession.

On cross-examination defendant testified that when he wrote in Exhibit 18 that he attempted to contact the deceased on July 4th, Gravante did not tell him to write that, and in none of the conversations with the police did they tell him that he had attempted to talk to her on the 4th [Tr. of R. p. 586].

Nor did they say anything about "discerning the reasons and feelings for her rejection of your close and intimate relationship," but it was not true that she rejected the relationship [Tr. of R. p. 586].

The relationship had existed for nearly two years and the police had no way of knowing that. Although having "our correspondence" they knew at least that they did have a relationship [Tr. of R. p. 587].

The language, "As exactly as I can recall, the following facts constituted a sequence of events which culminated in her death," was defendant's language. Gravante did not suggest it [Tr. of R. p. 587].

The next language, "I left my place of residence at approximately 3:00 o'clock p.m. and drove toward her

residence," was true, nor did "they" suggest "that" to defendant [Tr. of R. p. 587].

The language, "I may have stopped for gas on the way, and arrived at the east entrance of Bel Air at approximately 4:00 o'clock," was true "approximately" and was not suggested to defendant [Tr. of R. p. 587].

The language about driving past the home, seeing the car in the garage and the two children was the defendant's own idea and it was the truth [Tr. of R. p. 588].

With reference to the language, "Realizing the futility of continuing my attempt to talk with her at that time," the defendant "didn't mean anything"; the police did not suggest or tell him that his attempt to talk with her would be futile. Defendant does not recall what he had intended but he "tried to make the document look reasonable enough so that they would leave (him) alone" [Tr. of R. p. 588].

The only portion of the statement "so far" (on cross-examination) that is untrue is the phrase, "Realizing the futility of continuing my attempt to talk with her at that time." On occasions in June, deceased had refused to talk with the defendant. A policeman had come to the house on occasions and he never got in and that was a "futile attempt to talk with her" [Tr. of R. pp. 588-589].

The language, "and then proceeding to a vantage point on that side of the canyon" is true [Tr. of R. p. 589].

But the language, "From there I watched until she drove down the road toward her parents' home," is not true; no one suggested that he "put that in there." It was his own idea. He cannot give a specific reason for saying "that." Originally he wrote "toward her *mother*" and then he crossed out "*mother*" and put in "*parents' home*." He does not recall that anyone suggested that change [Tr. of R. p. 590].

The language, "Up the west entrance again and past her home again," is not true. No one told him to put it in. He "just wrote it" [Tr. of R. p. 591]:

The language, "I then drove to the U. C. L. A. parking area," is true and nobody told him to write that [Tr. of R. p. 591].

The language, "And called a Yellow cab and was driven to her residence," is the truth and, "I went around the house to the rear and entered by the door to the children's room," was not suggested by anyone [Tr. of R. p. 591].

With reference to the language, "Then I waited until she returned with the children in the early evening hours," the police did not know that that was true. They did not suggest it to him and he wrote it of his own volition [Tr. of R. p. 591].

With reference to the language, "I hid in a closet in the children's room, waiting until they were asleep," the police did not suggest it and defendant wrote it of his own volition [Tr. of R. p. 592].

The language, "Norma came home about 12:00 or 1:00 o'clock a.m.," is true and the police did not tell him that. He wrote it of his own volition [Tr. of R. p. 592].

The language, "she was followed home by some other car," is true and was not suggested by the police. He wrote it of his own volition [Tr. of R. p. 592].

With reference to the language, "The other car's occupants waited until she closed her garage door and went around opening her front door, and then drove away," was not given him by the police; it was his own idea and while he "didn't write any of the document of (his) own

volition" that particular sentence was his idea [Tr. of R. pp. 592-593].

The language, "I waited in the children's room until she was in her own bedroom. Then I opened the door, which was ajar," was not told defendant by the police. He wrote it himself and no one suggested it to him [Tr. of R. p. 593].

With reference to the language, "Norma was stunned to see me, but she remained remarkable (sic) calm and self contained," the police did not suggest that Norma remained calm and self-contained, nor did anyone else [Tr. of R. p. 593].

With reference to the language, "I, on the other hand, was extremely nervous and generally unable to make myself realize that I was there in her room and had taken the measures described to see her." No one suggested it and that paragraph was his own creation [Tr. of R. pp. 593-594].

The police had not told him of the facts contained in the statement, "We talked for hour on hour. Norma had been out, had had some cocktails, and felt sleepy," nor was he questioned about those things. These words were his own thought and his own language [Tr. of R. p. 594].

The language, "I tried again, as I had tried many, many times before by telephone and by letter to get her to tell me her reasons and feelings for leaving me," was not suggested by the police. Defendant had not told that to them [Tr. of R. pp. 594-595].

"This" (*i.e.*, the last-quoted statement) was not the truth; he had tried "especially during the period of June—from about the middle of the month until I saw her on

the third, to contact her, and I had unsuccessfully tried during that period of time, right there" [Tr. of R. p. 595].

With reference to the language, "I told her that I could not believe that my threats were the answer," the police had told him that he was extorting money from the deceased. His telegram of June 18, was not a threat but the language, "will proceed without further consideration," inferring that the defendant was going to talk with deceased's mother, he would consider a threat [Tr. of R. p. 595].

The language in the letter of June 4th [Ex. 37], wherein he stated that he would write to deceased's father, mother and brother, he would consider it a threat "then" [Tr. of R. p. 595].

With reference to the language, "But Norma would talk about it. She started to go to sleep," it "appears" that the word "not" is omitted before the word talk; the police did not suggest that Norma started to go to sleep [Tr. of R. p. 596].

The police did not suggest any part of the language, "I couldn't believe it. I sat near her on the chaise lounge, smoking one cigarette after another and every few minutes going close to her to see whether or not she was really sleeping" [Tr. of R. p. 596].

Nor did they suggest, "And I think she was at least dozing, and I didn't know what to do. For days and days I had not known what to do. I had tried threats and coercion and profession of my feelings for her. She had rebuffed all my attempts and now she was going to sleep" [Tr. of R. p. 596]. Defendant does not know what he meant to convey when he wrote "and now she was going to sleep" [Tr. of R. p. 597].

On being asked whether he meant surprise or anger by the "wonder" *(sic)* mark after the sentence "and now she was going to sleep," the defendant stated he had no recollection; and when asked if he were offended "by that," defendant testified, "I don't understand your question"; and when asked, "You were offended when she went to sleep?" he answered, "I don't know how to answer your question" [Tr. of R. p. 597].

With reference to the language, "on the dresser by the door to her bedroom with a child's toy revolver and other things, I found a kitchen knife about ten inches long with a blade of about six inches," none of these matters were suggested in the questions by the police [Tr. of R. p. 597].

With reference to the language, "I took the knife and went back to the chaise lounge. Then I put the knife in my coat pocket and knelt beside her, for what *she* (sic) to be a long time," defendant testified that, "From the context, it would seem that that word would be *'seemed'* instead of the word 'she'" [Tr. of R. pp. 597-598].

The police did not suggest to the defendant that he had put the knife in his pocket [Tr. of R. p. 598].

The police did not suggest to defendant the following language, "(A)nd knelt beside her for what seemed to be a long time. She was asleep." They did not ask about that and it was all his own idea [Tr. of R. p. 598].

With reference to the language, "I took her throat in my hands and she awoke and started to scream," the officers suggested this to defendant, "When they were asking me questions about strangulation and my—they were so vague about it that I didn't know how she had been strangled," but the officers did not tell him that he took her throat in his hands and that she awoke and

started to scream. But they suggested "it" through their questions, but not "that she started to scream" [Tr. of R. pp. 598-599].

With reference to the, "I heard the maid, so I reached the knife in my pocket while holding my hand over her mouth," the officers did suggest that he held his hand over her mouth because "someone" had told him that the marks on his hands "looked like bite marks to them." These marks were on his left hand. He is right handed [Tr. of R. p. 599].

With reference to the language, "While holding my hand over her mouth. Then I hit her with the knife and pushed and pushed on it," the officers did not suggest to defendant that he "pushed and pushed on that knife"; "that" was his idea [Tr. of R. p. 599].

When asked what he meant when he said he pushed and pushed on the knife, defendant testified, "I didn't have any—I don't have any recollection of a specific meaning for it." In writing it he "meant to convey a semblance of a confession that would make the police" leave him alone and it was his own idea of "writing it that way" [Tr. of R. p. 600].

With reference to the language, "But she still made sounds and struggled on the lounge. I choked her more with some clothing—wound clothing around her throat, and after a long time she was still and the house was still and I couldn't realize that Norma was gone," the police did not suggest that she "had made sounds and struggled on that lounge"; that was his idea; only the point that "she had been found on the chaise lounge" was suggested to him [Tr. of R. p. 600].

No one suggested, "but she still made sounds and struggled on the lounge" nor did anyone suggest to him that he couldn't realize "that Norma was gone," although they told him that Norma was dead "if that has any connection" [Tr. of R. pp. 600-601].

The ideas in the sentence, "I took the knife, her car keys, and some money, and thought I must take her car and go," was suggested by Sergeant Gotch. That is why he wrote that particular sentence [Tr. of R. p. 601].

The police did not tell the defendant that, "I walked and walked and walked," nor did they suggest it to him. It was his own idea. It was true that on the 5th he walked back to U. C. L. A. [Tr. of R. p. 601].

No one suggested the following ideas, "The dawn was coming when I reached my car, got in, drove home, took off my clothes and threw them into the incinerator"; "that" was his own idea. The police in none of their questions even mentioned an incinerator [Tr. of R. p. 602].

In the statement, "I went to bed and must have slept some because shortly before noon I couldn't slept (sic) any more—" From the context, defendant would say he meant "couldn't sleep any more" [Tr. of R. p. 602].

The defendant has no specific recollection of what he meant by saying that, "I just waited for time to run out" [Tr. of R. p. 603].

With reference to the language, "Somewhere along the way I must have thrown out her keys and the knife because I didn't have them in the things I threw in the incinerator." Officer Gravante suggested "that" to defendant after he had read page four of the statement; he did not dictate "those two (sic) sentences"; defendant

"just wrote them" and "that" was his own choice of language [Tr. of R. p. 604].

The next paragraph, "I took some money from her purse and her keys to her car and the knife with me," was suggested to defendant between the writing of the first and second paragraphs; the paragraph was not dictated and it was defendant's own choice of language [Tr. of R. p. 604].

Juryman Hoyt asked the defendant a series of questions with reference to the writing of Exhibit 18. In reply, the defendant stated that with the exception previously mentioned (with reference to the insertion of the word "knife" after the word "kitchen") Officer Gravante gave him no indication of the substance of what he was "to write about"; that during the writing the defendant asked the officer for coffee; that Officer Gravante did not tell him what he was writing about before he started to write; that as the defendant finished each page the officer took it and that was the first time the officer was aware of what the defendant was writing or what he intended to write on that particular page [Tr. of R. pp. 217-220].

(2) Direct Examination of Defendant With Reference to the Confession.

At the time the defendant wrote Exhibit 18 he knew what he was writing and he wrote it

> "(B)ecause I didn't want to go on with this that I had been going on for all these hours. I wanted to get away from these officers because I wanted to talk to an attorney before I told what I knew about Norma McCauley, the details of our relationship." [Tr. of R. p. 511.]

The officers told him that if he wrote "this" they would leave him alone; Officer Hooper hit him in the stomach and asked him if he had heard him. The defendant said "yes," and the officer said, "Well, answer me," and that if he didn't answer his questions and "tell him what he wanted to hear, that he would work on me like that for the rest of the night; and Officer Gravante said that he meant it." The defendant asked what he could do to make them leave him alone. Gravante said, "Tell us about this; you know what has happened; now tell us about it" [Tr. of R. p. 512].

The officers, in the questions they had asked on July 5th and the early morning of the 6th, furnished the defendant "information regarding any circumstances of Norma's death." Sergeant Gotch told him that she was dead; that she had been strangled and Kirk found her on the chaise lounge. Sergeant Gotch said that a little toy car had been found in the chaise lounge [Tr. of R. p. 512].

While the defendant was writing Exhibit 18, page 5 was the only page on which Officer Gravante had "anything to do with the subject matter" and in that regard he asked, "What about the knife?" and "What about the keys?" [Tr. of R. p. 514].

The officer read the pages as the defendant wrote them; he was handing him each page. When he handed him page four, the defendant wrote the first paragraph of page five as a result of a question but there was no comment that prompted the defendant to write the last paragraph [Tr. of R. p. 514].

Prior to writing Exhibit 18, the defendant was questioned "about money" and Sergeant Gotch, Central Station, told the defendant that he thought that the defendant

stabbed her, strangled her "took her money and left" [Tr. of R. p. 515]. (This is an attempt to account for the defendant's including in Exhibit 18 the fact of his taking money after the killing.)

The defendant testified with reference to People's Exhibit 18 that:

He did not in fact hide in the closet in the children's room on the evening of July 4th.

He was not in her room in the early morning hours of July 5th.

He did not on that occasion talk to her and she started to go to sleep.

He did not in the early morning hours of July 5th find a kitchen knife about ten inches long with a blade about six inches on a dresser by the door in the bedroom.

He did not in the early morning hours of July 5th take Norma's throat in his hands at which time she started to scream.

He did not hear the maid and so reached for the knife while holding his hand over her mouth.

He did not choke her with clothing around her throat or take the knife and push on it.

He did not in the early morning hours of July 5th take the knife, the car keys, and some money [Tr. of R. pp. 520-521].

Although the defendant in Exhibit 18 said that he had taken off his clothes and had thrown them into the incinerator, he did not as a matter of fact throw any clothes in the incinerator on the early morning hours of July 5th, or around that period of time on July 2nd, 3rd, or 4th [Tr. of R. p. 645].

He made the statement, "Because I felt that with a stabbing, that there would be dirty clothes . . . bloody clothes" [Tr. of R. p. 645].

After the defendant wrote Exhibit 18 in the early morning hours of July 6th he went to the deceased's bedroom with a number of officers.

At that time Hooper asked the defendant if he had left Norma on the chaise lounge. The defendant said that he thought so. The officers pointed to a pocketbook and a small black purse on the dresser and asked the defendant where he had left "it." The defendant said he didn't remember. The officers asked if he had left "it here." The defendant said he thought so [Tr. of R. pp. 521-522].

Sergeant Hooper asked the defendant if "we" (defendant and deceased) struggled. Defendant said he didn't think so. Officer asked how the blood stains got on various places. Defendant said he didn't know.

Another officer, defendant thinks, was Gravante and he asked where defendant found the knife, took him to a dresser in the bedroom and asked him if that was where he found it. Defendant said, "Yes, but that dresser looked different." The officers asked the defendant if he left through the bedroom exit onto the lawn. Defendant told them that he did not think so.

One of the officers asked the defendant if he heard the maid. Defendant said he thought so.

The officers took defendant to the kitchen. Defendant told them that he did not know where the knife was. He helped them look for the knife. Defendant kept telling them that he was looking for "that set of steak knives, and what kind of a box it was in, et cetera."

The officers asked him over and over again where the knife was. Defendant told them he didn't know and "implored them to believe (him), and that we could look for it" [Tr. of R. pp. 523-524].

"On the way down the hill" the officers kept asking about the knife and the defendant kept telling Officer Gravante "over and over, 'I don't know where it is. Make him leave me alone'" [Tr. of R. p. 525].

Before they left the house they asked if he left with reference to various doors, as to each he said he didn't think so. Then they asked with reference to the kitchen exit and defendant said he thought he went out that way [Tr. of R. p. 526].

In the bedroom, Sergeant Hooper asked if the defendant washed up in the bathroom. Defendant said he didn't think so; he did not tell him that he took his handkerchief and wiped off the knife and went into the bathroom [Tr. of R. p. 526].

F. Evidence With Reference to the Issue of Defendant's Request for an Attorney.

(1) Testimony of the Investigating Officers.

Edward C. Kruegar is a police officer for the City of Los Angeles, assigned to the Hollywood Division, and was such on July 5, 1955 [Tr. of R. p. 123.]

On July 5, 1955 he saw the defendant in Apartment 105 at 5128 Marathon Street, Los Angeles. He entered the apartment with a key which he obtained from the manager. When he entered, the defendant was there. The officer told him he was under arrest. The defendant said nothing at that time. [Tr. of R. pp. 123-124.]

The defendant did not ask permission to use the phone nor ask if "he would have time to make a telephone call to an attorney." He arrived at approximately 1:30 p.m. [Tr. of R. pp. 125-126.]

Wayne L. Jackson is a police officer for the City of Los Angeles and assigned to the Hollywood Division [Tr. of R. p. 128.]

On July 5, 1955 he was temporarily attached to the Detective Bureau and on that date he saw the defendant at 5128 Marathon, where he entered with Officer Kruegar.

Officer Kruegar told Crooker he was under arrest. The defendant said nothing. Officer Jackson does not remember the defendant saying anything about wanting to call an attorney [Tr. of R. p. 130].

Grover Armstrong is a lieutenant of police in charge of the West Los Angeles Detective Division and was such on July 4th and 5th of 1955 [Tr. of R. pp. 65-66].

He met the defendant Crooker on July 5, 1955 at about 3:30 in the afternoon in the defendant's apartment on Marathon Street in Hollywood.

He was accompanied by five other officers and Deputy District Attorney Alexander [Tr. of R. p. 66].

Other than identifying himself, Lieutenant Armstrong first spoke to the defendant at approximately 8:30 the same day at the Crime Laboratory.

During the time that Lieutenant Armstrong was in the defendant's apartment he did not recall the defendant saying that he wished to get in touch with an attorney [Tr. of R. p. 66].

Officer Stambler is a police officer attached to the West Los Angeles Detective Bureau and was such on July 5,

1955, on which day, at approximately 2:00 or 2:15, he saw the defendant in his apartment, on Marathon [Tr. of R. p. 100].

While in the defendant's apartment, Officer Stambler said to the defendant, "You don't seem to be interested about this thing at all, do you?" The defendant said, "Well, I have an idea what it is." The officer said, "Well, you couldn't have, because I said nothing about the case at all, . . ." That was all of the conversation [Tr. of R. p. 102].

Frank Gravante is a police officer for the City of Los Angeles, attached to West Los Angeles Detective Bureau, and was such on July 6, 1955.

Officer Gravante first saw the defendant at approximately 10:35 p.m., July 5, 1955, at the West Los Angeles Detective Bureau, in the Homicide Room; no other person was present.

The officer introduced himself to the defendant as one of the investigating officers and at that time the defendant did not say anything about wanting to see an attorney.

He next saw him at approximately 1:15 a.m., on July 6th, when he was with him until approximately 2:00 a.m. with four other police officers; Lieutenant Armstrong was asking most of the questions; two of the others occasionally asked the questions.

During that time, from 1:15 until 2:00, the defendant did not, in the presence of Gravante, say that he wanted to see an attorney.

At no time between the time when Officer Gravante first saw the defendant at 10:30 p.m., until the time when the defendant started writing Exhibit 18, did the defendant say in his presence that he wanted to see an attorney.

The conversation in the Crime Laboratory started at about 8:30 and lasted about an hour "more or less;" there were two other officers present and a third officer was "in and out." [Tr. of R. p. 66.]

During the conversation, from 8:30 until approximately 9:30, the defendant did not, to Lieutenant Armstrong's recollection, request an attorney [Tr. of R. p. 70].

Lieutenant Armstrong next saw the defendant at West Los Angeles, at about 9:45, after the conversation in the Crime Laboratory, and questioned him from 11 o'clock until about 12:15 [Tr. of R. pp. 71-72].

Other officers were in and out of the room; Lieutenant Armstrong did most of the questioning. Some of the others occasionally asked some of the questions.

Lieutenant Armstrong started the questioning by asking the defendant to describe his actions on July 4th, particularly with reference to abrasions he had on his fingers and the scratch on his neck and chin. The defendant stated that he had injured his fingers in releasing a car "bumper hookup" and his neck and chin by shaving [Tr. of R. p. 73].

On being asked questions with reference to the route to the scene of the alleged traffic occurrence, the defendant stated that he preferred not to answer; but did not say that he preferred to wait until he had discussed the matter with an attorney [Tr. of R. pp. 73-74].

He was asked if he had been on Somera Road, and he said no. When asked as to why he had denied this he declined to answer. With reference to the route of the alleged accident, he said, "I don't care to answer." [Tr. of R. p. 74.]

During this period, from 11:15 to 12:15, the defendant was asked if he had killed Mrs. McCauley and he said no [Tr. of R. p. 74].

He also denied being in Mrs. McCauley's home between midnight and 4:00 a.m., on July 5th.

Lieutenant Armstrong's best recollection is that the first time he heard that the defendant would like to call an attorney was in Mr. Roll's office the next day, following the writing of the confession, he did not hear the defendant ask for an attorney in his presence before that time [Tr. of R. pp. 75-76].

At one o'clock the doctor entered the room and examined the wounds on the defendant's fingers and face.

At 8:30 p.m. the defendant was given a carton of milk and a sandwich. During "coffee breaks" the defendant asked for coffee and when he did, he was given it. He did not ask for anything else [Tr. of R. pp. 78-79].

Jack Gotch, attached to the West Los Angeles Detective Bureau, was one of the investigating officers in this case.

Officer Gotch first saw the defendant at his apartment at 5128 Marathon, Apartment 105, between 2:00 and 2:30 p.m., on July 5, 1955 [Tr. of R. p. 80].

To the best of Officer Gotch's recollection, the first time anything was said by the defendant about wanting to call an attorney was after he had had a sandwich, the milk, and a cigarette, in the Polygraph Room at Central Station, when the officer was alone with him. When he made the request the officer asked who the defendant wanted for an attorney and the defendant said he didn't know. The officer said that after the investigation was concluded the defendant could call an attorney and if he

didn't have any funds to hire an attorney when he went to court, a public defender would be assigned to handle his case.

The defendant said he had a friend who had been an instructor at Pepperdine College who would probably handle the case for him. The officer asked him for the name and the defendant said that the name was Simpson; that he lived in Long Beach [Tr. of R. p. 83].

Officer Gotch does not recall whether he or Officer Stambler used any profane language toward the defendant, but it is possible that they did [Tr. of R. pp. 86-87].

Officer Gotch never heard the defendant request an attorney other than on the occasion previously noted. The defendant was never struck nor threatened in the presence of Officer Gotch [Tr. of R. pp. 89-90].

Officer Gotch did not know the cause of Norma McCauley's death up to the time that Exhibit 18 was completed, and did not learn of it, aside from the confession of defendant, until sometime on July 6th, after the completion of the autopsy [Tr. of R. pp. 96-97].

At about 8:30, at the Central Station, the officers asked the defendant if he would take the lie detector test and, "if he was not involved, then he could clear himself and it would give us a chance to go out and look for the parties." [Tr. of R. pp. 102-103.]

The defendant said he would not take it. Officer Stambler never heard the statement that the defendant "wouldn't take it until he had a chance to talk to an attorney." [Tr. of R. p. 103.]

Officer Gotch did not use any profane or obscene language to the defendant.

From the time Officer Gotch came into the defendant's room in the early afternoon until he left him after 11 o'clock he never heard the defendant say that he would like to call an attorney or say anything about an attorney [Tr. of R. pp. 105-106].

J. H. Hooper is a Detective Sergeant assigned to the West Los Angeles Division of the West Los Angeles Police Department and was so assigned on July 5, 1955.

He first saw the defendant at about 11 o'clock on the evening of July 5, 1955, in the Detective Bureau of the West Los Angeles Police Station [Tr. of R. p. 108].

During the period that Sergeant Hooper was present from 11:00 to 12:00 o'clock the defendant made no request that he be allowed to see an attorney nor was there any discussion of an attorney. "When he didn't want to answer the question he just said he would rather not answer, or rather not make a statement about that." [Tr. of R. p. 110.]

It was pointed out to the defendant that the officers believed that he had killed Mrs. McCauley because of the wounds he had and the statements he made concerning how he got the wounds. In reply, the defendant said he didn't want to discuss it; didn't want to make any statement about it. The officer does not recall that he ever heard the defendant deny "it." [Tr. of R. p. 111.]

Sergeant Hooper does not recall any profanity either by himself or others but is sure that no obscene language was used [Tr. of R. pp. 111-112].

At no time from 11 o'clock in the evening, when he first met the defendant, until the early morning hours, when the officer concluded his investigation, did the defendant say anything about wanting to talk to an attorney [Tr. of R. p. 114].

Henry W. Kerr is an Inspector of the Los Angeles Police Department assigned to the Detective Bureau.

On July 5, 1955, he saw the defendant at 3:30 in the afternoon, at 5128 Marathon Street [Tr. of R. p. 115].

During the questioning at the Central Police Station, the defendant stated that he didn't want to say anything which might involve him or implicate him in any way; however, Inspector Kerr did not recall him saying anything about an attorney [Tr. of R. pp. 119-120].

To Inspector Kerr's best knowledge, the defendant was not questioned about the commission of the crime prior to going to the Crime Laboratory and Polygraph Room for the reason that the operator of the polygraph equipment prefers to have a subject "with as little previous discussion of the case as possible." [Tr. of R. pp. 121-122.]

Raymond C. Willis is a police officer of the City of Los Angeles Police Department, assigned to the Crime Laboratory, in the polygraph section, and was such on July 5, 1955 [Tr. of R. p. 132].

On that date, at about 5:30 p.m., he saw the defendant in the polygraph section in the old Central building.

At about 6:30, the defendant was brought into the room, seated "in the polygraph chair," and asked if he wanted to take the polygraph examination. The defendant declined to "take the polygraph directly" although there was no "direct denial or refusal to take the test." [Tr. of R. p. 133.]

Willis talked to the defendant for about an hour and a half, alone, explaining the workings of the polygraph. During that time Willis cannot remember the defendant ever stating that he didn't want to take the test until he

had a chance to talk to an attorney; toward the end of the conversation Willis asked the defendant why he refused to take the test. The defendant stated, "it was the self-preservation complex, self-protection complex." [Tr. of R. p. 134.]

Either "at that time or just when he was leaving" the defendant talked about an attorney who was a former instructor "that he thought he would like to contact some place along there." Willis wasn't sure whether it was "at that time or just when he was leaving" that this was said. Willis imagines that he "stated it was his privilege."

Willis explained the details of the physical operation of the polygraph machine to the defendant and told him "That if there is nothing to hide, nothing to be afraid of, it can do nothing but help you to clarify the situation and the subject's part of the situation to the officer for further investigation." [Tr. of R. pp. 136-137.]

At one time Willis asked him, "Have you ever killed anyone?" and the defendant "didn't answer in any way." [Tr. of R. p. 138.]

(2) Defense Testimony.

Raymond C. Simpson is an Attorney at Law, and was such on July 6, 1955.

He knows the defendant John Crooker, who was a student for two years at the time when the witness taught at Pepperdine College, and thereafter was acquainted with him socially when the defendant was in law school [Tr. of R. p. 220].

At approximately 4 o'clock on the afternoon of July 6th, he received a telephone call from a person who identified himself as Ernie Roll, who explained in substance that

he had a young man in the office who claimed to have been a student of the witness, to know the witness and who wanted to communicate with him; that his name was John Crooker. The witness stated that he did know him. Mr. Roll said, "He is here, you may now talk to him." The witness talked with the defendant who stated "the nature of his difficulty" and then asked, "How can I stop them from using force to make me answer questions," at which point Mr. Roll said, "Simpson, you know better than that, no force has been used by this office whatsoever, and Crooker knows better than that." The witness and Crooker had some further discussion, including something about "the absence of funds." Mr. Roll "then pointed out that funds or the money he had there in his wallet could not be released because it might very well be used as evidence." The witness was told that the defendant was going to be transported to the West Los Angeles Jail and that the witness could see him that evening. He was told that a statement had been taken from the defendant. He was not invited by Mr. Roll to "come down" and participate in a conversation that was then going on [Tr. of R. pp. 220-222].

During the conversation (by telephone from Mr. Roll's office) the defendant asked Mr. Simpson to represent him and to come down as soon as he could. Mr. Simpson did not decline to come to the District Attorney's office but was "under the impression" that the first convenient time to see him "as stated by Mr. Roll" would be that evening.

On cross-examination, Mr. Simpson testified with reference to the conversation between himself, Mr. Roll and the defendant, in substance, as follows:

That the call came to him from Mr. Roll, who told him that he was with a young man, John Russell Crooker,

arrested in connection with a murder. Mr. Simpson said that he was a former student of his. Mr. Roll said that he had tried to take a statement and that he had said he wanted to talk to Mr. Simpson and that he would put him on if Mr. Simpson wanted to talk to him; that Mr. Simpson thanked him; that the defendant came on the line and stated that he had been in custody since the previous day about noon; that he felt (at the time of the conversation) that he would like to have counsel at the earliest opportunity; that he didn't have much resources and that he understood that in court he would have the right to a public defender but that he had been given to understand that he could have representation at that time; that he would like to ask Mr. Simpson if he was inclined to "take the job"; that the defendant then said that Mr. Roll would talk with him; that the defendant would "go and get things"; that the defendant then asked whether he was able to "proceed with the questioning," whether "they" had the right to use physical force to have him continue "with the questioning" and whether he would have difficulty in court "substantiating the fact that they have if I am alone with them"; that Mr. Simpson said something and the defendant then said that "they" will attempt to continue with the questioning and "probably to avoid the force I will have to talk with them"; that at that point Mr. Roll "got on the wire" and said that he had heard what the defendant had said but that he told the defendant that he didn't have to answer a single question and then asked the defendant if that were not correct, that the defendant then said, "He just wants me to answer him if I have to answer any questions that he asked me"; that the defendant said that he had told the officers "all the way along the line" that he didn't want to

answer anything without counsel; that the defendant asked what in the world was going on and stated that "they are probably going to force me to talk with them"; that Mr. Roll then said that the defendant knew better than that; to wait a minute and permit him to say something; that "this man" came into his office; that he (Mr. Roll) asked him a few questions; that he said he wanted counsel; that Mr. Roll had said, "Do you have anyone in mind?" and that the defendant said, "I don't have money to hire counsel"; that Mr. Roll had explained about the public defender and gave him the yellow phone book to pick anyone he wanted that he thought would represent him; that he had said that he liked to have Mr. Simpson. Mr. Roll had had his secretary put the call in and had stopped any further questioning; that anything that the defendant would say would be free and voluntary and that he didn't have to answer a single question if he didn't want to; that the officers had already taken a complete statement which was before him; that all he had to do was say he didn't want to talk to Mr. Roll and he would be taken out of the room and booked and arraigned the following day. He then asked Mr. Simpson if he was going to represent the defendant; that Mr. Simpson said something and Mr. Roll then asked if Mr. Simpson would represent the defendant and said that if he wanted to refuse to answer on the ground of self-incrimination he could do so and that they would "then stop it"; that the defendant said that he was still on the line and that he would like to talk to Mr. Simpson a moment; that Mr. Roll said, "Well, let's make it fast. We have been on here quite awhile"; that the defendant then said that he had "told them as much as I know about this matter, and I have tried to express myself as well as possible. There are holes that I cannot fill and they insist that I fill them. I just

don't know"; that Mr. Simpson said something and the defendant then said, "All right. Thank you. Goodbye" [Tr. of R. pp. 226-230].

John Russell Crooker, Jr., testified on *voir dire*, with reference to Exhibit 18, as follows:

He lived at Apartment 105, 5128 Marathon Street, Los Angeles, on July 5, 1955 [Tr. of R. pp. 138-139].

He was there in the morning of that date and at about 11:00 or 12:00 noon he was seated in his apartment when he heard a key in the door and two officers came in with drawn guns [Tr. of R. p. 139].

They told him to raise his hands, which he did. He asked them what it was about. They said it was serious and they told him that he was under arrest.

Defendant asked if he could dress. He was given permission and he did dress. He then asked the officers if he would have time to call an attorney. The officers said he would have time. He did not make the call. "They had seated me in a chair in the opposite end of the room" [Tr. of R. p. 140].

After Sergeant Gotch arrived, defendant asked him "what this was all about" and if he could call an attorney. Gotch asked if he could search the apartment. Defendant told him that he would prefer that he obtain a warrant. The officer said he really didn't need one and, "You are going to go that route—that it was all right with him (sic)" [Tr. of R. p. 141].

After Lieutenant Armstrong arrived, defendant told him that he had asked to talk with an attorney before he answered Sergeant Gotch's questions to which Lieutenant Armstrong made no direct answer [Tr. of R. pp. 143-144].

Sergeant Gotch told the defendant he was under arrest for suspicion of murder before Lieutenant Armstrong came into the apartment. This was the first that anyone had told him of the reason for the officers being in his apartment [Tr. of R. p. 145].

At Central Station the defendant was told to take off his clothes, which he did, and he was photographed. Afterward he had a conversation with Lieutenant Armstrong during which he told him that if they would allow him to have an attorney he would be very willing to talk to them about whatever had happened [Tr. of R. pp. 148-149].

While in the defendant's apartment, the officers asked him for his car keys and the location of his car. He told them and they left with the keys and came back in half an hour with a brown manila envelope. It was last seen by the defendant in the glove compartment of his car.

After he was photographed at the Central Station, defendant was taken to the Polygraph Room where he saw Mr. Willis, who attached a band around his chest and said that he was going to give him a lie detector test. Mr. Willis was asked if he would mind defendant telling him, before he started, that he would prefer having an attorney with him before taking that test. Willis asked, "why" and defendant said he didn't know very much about the machine, that he still didn't know "what had happened," why he was "in the hands of the police" and therefore felt he should have an attorney with him [Tr. of R. pp. 150-152].

Defendant did not state that his primary reason for declining the lie detector test was a self-preservation complex [Tr. of R. p. 152].

Willis told defendant about the machine and said that he shouldn't have any reason for not taking the test if he had nothing to hide. He asked the defendant what the defendant had to hide that he wouldn't take the test. The defendant told him that he had told Officers Gotch and Armstrong that he had no objection to talking with them about whatever they had to talk about, but that he wanted counsel with him, that he wanted to talk to an attorney.

Defendant mentioned Ray Simpson, who had taught a history course at Pepperdine (taken by the defendant), who was also a practicing attorney [Tr. of R. p. 152].

Afterward, Lieutenant Armstrong "again prevailed upon" defendant to take the test. Defendant told him that he didn't mind taking the test but wanted an attorney with him when he took it [Tr. of R. p. 153].

Sergeant Gotch asked defendant if he was in love with Norma McCauley. Defendant thinks he said, "No," but if he did not say, "No," he "declined to answer that" [Tr. of R. p. 154].

After some questions about his employment by the deceased, defendant was asked some questions pertaining to his relationship with her, which he declined to answer.

Sergeant Gotch then said, "Now look, we have listened to your —b.s—long enough. Now I am going to tell you what I think. . . . Norma McCauley is dead. I think you killed her. You had been shaking her down for money, and you went out there and stabbed her and strangled her to death" [Tr. of R. p. 156].

Defendant didn't say anything in response to what Sergeant Gotch had said.

Officer Stambler "at my (defendant's) lack of response" used obscene and profane language and repeated what

Sergeant Gotch had said "about stabbing and strangling Norma."

Defendant denied that. He had "never done anything of that sort"; described generally his financial relationship with her; that he asked them, "since they came into my apartment, for an attorney, and I would rather not answer any more questions until I could have an attorney with me" [Tr. of R. pp. 156-157].

Before the defendant left Central Station, defendant asked Lieutenant Armstrong if the officers were going to use force to make him answer their questions before he could have an attorney with him. Lieutenant Armstrong said, "This is a free country." Defendant said, "I know that," and then asked him again if he was going to use force to make him answer all the questions. Lieutenant Armstrong said, "You don't have to say anything you don't want to" [Tr. of R. p. 158].

Defendant was then taken to West Los Angeles Station at about 10:30. There he met Officer Gravante, whom he told that he had asked for an attorney since the officers came to his apartment; that he would still like to have an attorney with him and that he would not like to answer questions until he had that attorney [Tr. of R. pp. 158-159].

A series of questions were then asked, defendant telling them that questions "pertaining to Norma" he didn't want to answer until he could talk to an attorney but "when they asked me questions about myself I answered them" [Tr. of R. p. 160].

Sergeant Hooper then "took over the questioning" and asked him if he were trying to refuse to answer on the grounds that it might incriminate him. The defendant

said no, that those were "his words"; that he (the defendant) had not used them and that he would like to have what he told the officers from the beginning, which is that he would like to have an attorney before he answered their questions.

Sergeant Hooper "jumped up from his chair over to my chair and banged his hand down on my knee." When he did so, defendant turned to Lieutenant Armstrong and said, "There, you see." Lieutenant Armstrong said, "What do you mean?" Defendant said, "They are going to use force to make me answer their questions before I have an attorney" [Tr. of R. p. 161].

Lieutenant Armstrong left and Sergeant Hooper said, "Look, you son-of-a-bitch, I have been in this work for 16 years, and I'm not going to let someone like you come in here and tell me he is not going to answer questions. You are going to tell us what we want to know; and you are going to tell us now." With that he hit defendant with his fist in his stomach. Hooper said, "Did you hear me?" and hit defendant again in the stomach and defendant said, "Yes, I heard you." Hooper said, "Well then, answer me when I ask you something, say something to you. You are going to give me the answers that I want or I am going to take you out there and work on you like that for the rest of the night" [Tr. of R. pp. 161-162].

Officer Gravante then said that Sergeant Hooper meant exactly what he said. Defendant asked Gravante "what he wanted me to say and what I had to say to make them leave me alone." Gravante said that he wanted defendant to tell them what had happened. Defendant said he didn't know. Gravante said, "Well, I think you do know. I think that you killed Norma." Defendant told Gravante

that he would say anything "they wanted me to say if they would leave me alone" [Tr. of R. p. 162].

Defendant had a little more conversation with Mr. Gravante wherein he "tried to get him to tell me what he wanted me to say." Gravante said he would get a paper and pencil and defendant could write it down and defendant did begin to write.

Defendant identified Exhibit 18 as the statement he wrote at that time and place [Tr. of R. p. 162].

Defendant was taken back to the West Los Angeles Jail at about 5:05 a.m., and to the office of the District Attorney of Los Angeles County about "2:00, or 3:00, or 4:00 o'clock" of the afternoon of July 6, 1955 [Tr. of R. p. 167].

Mr. Roll wanted defendant to repeat what he had written "and started that process" when defendant interrupted him and told him that from the beginning he had asked for an attorney; that he would like to talk to an attorney before answering "their questions" and that "this statement had been made and was responsible for the fact—from the fact that they would not allow me to do so" (*sic*) and asked if he would let defendant "have an attorney with" him [Tr. of R. p. 168].

Up to this time defendant had not been able to use the telephone for any purpose.

Mr. Roll said that defendant would have the right to a public defender. Defendant testified that he believed that Mr. Roll asked him if he had any money, and believed that he told him that he had none; but that he would like to call an attorney and he believed (at that time of his testimony) that he "mentioned Raymond Simpson's name; that if he could not represent me, if he could not be with me, perhaps he could recommend someone who would."

Mr. Roll said again, that he could have a public defender when he got to court. Defendant asked why he couldn't have an attorney with him at that time. Mr. Roll pointed to Mr. Alexander and asked him to convey defendant's rights to him. Mr. Alexander told him that he could have a public defender. Defendant asked why he couldn't have an attorney with him then [Tr. of R. pp. 168-169].

Mr. Roll "finally" put through the call to Raymond Simpson in Long Beach. The defendant talked to Simpson on the phone. The conversation was not private. All the officers were present and "It was interrupted by Mr. Roll. . . ." who was "on an extension phone" [Tr. of R. p. 169].

Mr. Roll said to Mr. Simpson, "This boy doesn't have any money, you know, and you still want to represent him?" And he "talked to him in that vein." Defendant told Mr. Simpson "that they were making me answer their questions, Mr. Roll interrupted and said that there was no coercion used at all, and that everything I had said was free and voluntary and that—well, language to that effect; and cut me off from that conversation I was having with Mr. Simpson" [Tr. of R. p. 169].

At the time of the trial the defendant had studied "one academic year" of law which included criminal law [Tr. of R. p. 170].

Officers Jackson and Kruger did not in any way threaten or abuse the defendant. When the defendant asked for water or cigarettes, they gave it to him.

In the apartment the defendant was not in fear that he would be physcially harmed by Jackson or Kruger.

While in the apartment, neither did Sergeant Gotch nor Stambler use any physical violence on the defendant or threatened him in any way.

When they arrived, neither Ray Pinker nor Captain Stilison used any violence on or threatened the defendant in any way [Tr. of R. pp. 171-174].

Up to the time that the defendant was taken out of the apartment nobody had used any force of any kind on him nor had anybody threatened him in any way or abused him in any way; nothing that had been said or done up to that time caused him to have any fear of physical violence from any of the men in the apartment [Tr. of R. pp. 179-180].

At the Photographic Laboratory (at Central Station) no one used any violence on the defendant, no one threatened or abused him in any way nor did anyone insult him nor up to approximately 6 o'clock, when he left the laboratory, had any questions been put to him about Norma McCauley's murder [Tr. of R. p. 183].

From the laboratory he went to the Polygraph Room where he met Mr. Willis. He was left alone with him, no physical abuse was used on him up to that time, nor during the time Willis was with the defendant did Willis strike him or insult him [Tr. of R. p. 183].

Before the defendant left Central Station, Officer Armstrong told him that he did not have to say anything he didn't want to say, using "almost those exact words" [Tr. of R. p. 185].

No one struck the defendant at the Crime Laboratory, nor threatened to strike him; profanity may have been used but that did not frighten the defendant [Tr. of R. p. 186].

During the time that the defendant was writing Exhibit 18 he ran out of cigarettes and Officer Gravante let him have some of his; the defendant also had coffee during that time [Tr. of R. p. 196].

When the defendant asked Officer Gravante what the officer wanted him to write [in Ex. 18] Gravante did not tell him what to write. During the entire time that the defendant wrote, Officer Gravante did not direct him to write anything; he let him alone and permitted him to write; he told the defendant to put in his own words; the defendant "proceeded to put it in (his) own language."

However, Officer Gravante "added a word" so that a sentence which the defendant originally wrote reading, "I found a kitchen about ten inches long" was changed to read, "I found a kitchen knife about ten inches long"; when the defendant wrote that sentence in its original form he did not mean to say that he found a kitchen ten inches long [Tr. of R. pp. 198-199].

With reference to the matters appearing on page 5 of Exhibit 18, Officer Gravante asked the defendant questions "pertaining to it" and after asking those questions the defendant wrote that page in his own language, his own choice of words [Tr. of R. p. 200].

While the defendant was in Mr. Roll's office no one struck him, but upon being asked on cross-examination whether he was threatened, he testified that he tried to tell Mr. Roll of his "treatment the previous night"; that from the beginning of the interrogation he had been trying to have an attorney; that he had not been allowed to do so; that at that point Sergeant Hooper stopped him from talking and said, "I don't believe that we hurt you"; that the defendant told Mr. Roll that Sergeant Hooper

had hit him twice or "told that to Sgt. Hooper"; that Sergeant Hooper repeated, "I don't believe that we hurt you." This he stated was, "What I was apprehensive of." He testified further that he believed that he was threatened "by the very presence of the same officers who had interrogated" him the previous day and that he felt threatened "by Mr. Roll's attitude with Mr. Simpson" and did not feel that he could say to Mr. Simpson what he wanted to say to him.

When asked on cross-examination what Mr. Roll said to Mr. Simpson that he, the defendant, considered a threat to him, he stated that he didn't recall the exact language but that he did recall "his interrupting my conversation with Mr. Simpson on two occasions" of which "I was apprehensive" to this extent: "that I had been trying from the beginning to have an attorney with me. I thought that this was my opportunity, and if I did not have it, I had not accomplished anything"; that he felt that if he "said anything to Mr. Simpson that the conversation would be ended and that I would be back in the hands of the same officers who had worked on me the night before" [Tr. of R. pp. 203-205].

The defendant testified that he had a separate conversation with Deputy District Attorney Alexander, after the discussion on the telephone with Mr. Simpson and with Mr. Roll, wherein he told him that he had, since the interrogation started, repeatedly asked for an attorney which had been refused; that he felt that the officers had forced him to answer questions "and to say what I had already said"; that he had felt the same thing had happened "right there in Mr. Roll's office"; that he didn't know "what (he) could do about it" and "implored him" to "make the officers leave me alone at this point"; that he

wanted to have an attorney with him; to which Mr. Alexander said that they were all through with him, that was all "that they were going to do" to him [Tr. of R. pp. 232-233].

Defendant saw an attorney on the evening of July 6, 1955, and was arraigned in court the following day [Tr. of R. p. 623].

When defendant was asked for whose protection he wanted to talk to an attorney before he told what he knew he answered that it was for "Norma's" protection [Tr. of R. pp. 622-623].

(3) Prosecution's Rebuttal.

Grover H. Armstrong was not told by the defendant, at the premises where the defendant was arrested by him on the afternoon of July 5, that he did not want to talk until he could see an attorney. At the Central Station the defendant did not say that if he could have an attorney he would be willing and anxious to talk about anything that had happened [Tr. of R. p. 235].

That in the Polygraph Room the defendant did not state that he didn't mind taking the test but that he wanted an attorney [Tr. of R. p. 235].

At the West Los Angeles Police Station Sergeant Hooper did not jump up from his chair and "bang his hand down on the defendant's knee" in Lieutenant Armstrong's presence; that the defendant did not then say to him, "There, you see," nor the witness say, "What do you mean?"; nor the defendant say, "They are going to use force to make me answer their questions before I have an attorney."

When he was brought back to the West Los Angeles Police Station, he looked "very much like he did when (the witness) first saw him, . . ." [Tr. of R. pp. 235-236].

Henry W. Kerr did not see Sergeant Hooper strike the defendant at any time nor did the defendant at any time make any complaint that anybody had struck him.

Sergeant J. H. Hooper did not jump up from a chair, go over to the defendant's chair and bang his hand down on the defendant's knee at any time, nor did the defendant then turn to Lieutenant Armstrong and exchange remarks with him and then say, "They are going to use force to make me answer their questions before I have an attorney."

Sergeant Hooper made no such statement as calling the defendant a son-of-a-bitch or state that he had "been in this work for sixteen years . . ."; nor say that he was not going to let the defendant tell him that he was not going to answer questions and that the defendant was going to tell the officers what they wanted to know and do so at that time. The officer did not make any part of such statement [Tr. of R. pp. 242-243].

Sergeant Hooper did not strike the defendant in the stomach or touch him at all, nor did he say, "Did you hear me?" and hit him again in the stomach, nor did the conversation occur wherein the defendant testified that he said, "Yes, I heard you," and Sergeant Hooper then said, "Well, then answer me . . ."

Nor did he say that the defendant was going to give the officers the answers that he wanted or that the officer was going to take the defendant out and "work on (him) like that for the rest of the night," nor did Officer Gravante thereafter say that Sergeant Hooper meant exactly what he said [Tr. of R. p. 243].

At the time of the trial Sergeant Hooper had been a police officer for at least fourteen years.

Theodore B. Ley is a police officer attached to the West Los Angeles Jail; he is the "Day Watch Jailer" and was on duty July 6, 1955; on that morning he had a conversation with the defendant wherein the witness asked the defendant in his cell, "if he wanted to put in a call for an attorney," and the defendant told the officer that he "had no attorney and he had no one to call." The officer asked him "about his relatives," if he wanted to put a phone call in to his relatives; that the defendant said "his relatives were all in the East and he didn't want to bring them into it" [Tr. of R. pp. 244-245].

William Stambler did not at any time hear Sergeant Gotch say to the defendant, "You stabbed her and strangled her to death?"; nor did he (Stambler) say to the defendant, "You stabbed her and strangled her to death?" [Tr. of R. p. 254].

Officer Gravante testified that in Lieutenant Armstrong's office, prior to the time that the defendant wrote Exhibit 18, Sergeant Hooper did not jump up from his chair, go over to the defendant's chair and bang his hand down on the defendant's knee, nor did defendant then turn to

Lieutenant Armstrong and say, "There, you see," nor did Armstrong say, "What do you mean?" or anything like that [Tr. of R. p. 266].

Nor did the defendant say, "They are going to use force to make me answer their questions before I have an attorney," and Sergeant Hooper did not say,

> "Look, you son-of-a-bitch, I have been in this work for sixteen years and I am not going to let someone like you come in here and tell me he is not going to answer questions. You are going to tell us what we want to know, and you are going to tell us now." [Tr. of R. pp. 266-267.]

Sergeant Hooper did not strike the defendant with anything in the stomach nor did he say, "Did you hear me," and hit the defendant again in the stomach nor did the defendant say that he had heard him; nor did Sergeant Hooper say, "Well, then, answer me when I ask you somthing, say something to you," nor did Sergeant Hooper say that the defendant was going to give him the answers that he wanted or that he was going to take him "out there and work on (him) like that for the rest of the night"; nor did the witness say to the defendant, "Hooper meant exactly what he said" [Tr. of R. p. 267].

The defendant did not ask the witness what he or Hooper wanted him to say or ask what he had to say "to make them leave him alone." The defendant did not say that he would say anything they wanted him to say if they would leave him alone [Tr. of R. p. 267].

Just prior to the defendant's starting to write Exhibit 18, the officer asked the defendant about the wounds on his hand and the "mark that he had on his neck." The defendant stated that he got the wound on his hand from helping a vehicle that needed a push; the bumpers locked, and he received the injury in that manner; that he got the mark on his neck while shaving, to which the officer replied that it looked to him "like a fingernail scratch mark." To this the defendant did not answer [Tr. of R. p. 268].

Officer Gravante then asked the defendant to relate any additional information that he could about his activities on July 5, and about the threats that he had made to Mrs. McCauley. He asked the defendant if he had been in the vicinity of 1100 Somera Road. The defendant then stated that he didn't care to discuss it. The officer told him that all that they wanted was the truth; that there was only one person who knew what occurred up at 1100 Somera Road on the night in question. Immediately afterwards the defendant said, "Well, I will write it out for you." The officer gave the defendant a pen and a yellow legal tablet and the defendant began to write [Tr. of R., p. 268].

During the time that he wrote Exhibit 18 the officer did not tell him what to write. During the time he was writing, he was smoking. Cigarettes were supplied by the officer. He asked for coffee and the officer sent for some, which was brought [Tr. of R. pp. 268-269].

Lois R. Johnson is a Legal Statement Reporter for the County and was such on July 6, 1955.

On that date she was in the office of the District Attorney, S. Ernest Roll. The defendant was there; she had a Stenograph Machine and she took a statement.

The statements made by the defendant were free and voluntary; no force or duress was used on him by anyone, nor was any promise of reward or hope of immunity extended to him [Tr. of R. p. 331].

The matters taken down on the Stenograph Machine were afterwards transcribed in typewriting and compared with the original notes, and the copy marked Exhibit 29 for identification is an exact copy thereof.

The Court sustained an objection to the use of any portion of Exhibit 29 for identification after the point where the statement was interrupted for the purpose of a telephone call [Tr. of R. p. 341].

Summary of the Argument.

Respondent respectfully submits that:

1. A defendant is not denied due process under the Federal or State Constitutions by refusal of investigating officers to allow him to consult with an attorney while he is in custody and being interrogated by the officers; and that
2. This defendant was not denied due process of law under the circumstances of this case by the admission into evidence of the confession made by him while he was in custody and not allowed to consult with an attorney.

ARGUMENT.

I.

The Defendant Was Not Denied Due Process of Law by Any Refusal of the Investigating Officers to Allow Him to Consult With an Attorney While He Was in Custody and Being Interrogated by Investigating Officers.

Respondent submits that the very statement of the first of the two limiting questions presented on the granting of certiorari in this matter presents a completely novel contention in its implications for the reason that this court has never held, nor to respondent's knowledge has any court held, that an entire criminal proceeding is rendered void if it follows a deprivation of defendant's constitutional rights during the course of the investigation, no matter how clear such violations might be.

Such violations have been held to vitiate convictions only when they have been found to have been had as the result of the use of a confession or other product of the mistreatment.

Stein v. People of the State of New York, 346 U. S. 156, 73 S. Ct. 1077, 1092;

Brown v. Mississippi, 297 U. S. 278, 56 S. Ct. 461 (use of a coerced confession); and

Rochin v. California, 342 U. S. 165, 72 S. Ct. 205 (forcible removal of stomach contents).

Such a sweeping declaration would enable a guilty defendant to escape just punishment because "the constable blundered," no matter how strong the remaining proof. Thus a prosecutor, with ample direct evidence of the crime and the defendant's participation therein, might find himself helpless to proceed against him because of such a preliminary mistake on the part of an arresting officer.

Respondent submits that a rule judicially declared by this Court entirely vitiating any judicial proceedings when an investigating officer has not with sufficient promptness complied with a request for counsel, no matter how fair the trial proceedings, would create an obstacle to the just disposition of a criminal case disproportionate to the proper advantage extended thereby to persons charged with crime.

We have confined our discussion of this question precisely as this Court has limited it. As to the admission of a confession obtained during a period of detention and interrogation prior to arraignment, without counsel, see II, *infra*.

It must be conceded in the instant case that the defendant was represented by, and consulted with, counsel of his own choice at all stages following the institution of judicial proceedings. (*Cf. Powell v. Alabama*, 287 U. S. 45, 53 S. Ct. 55.)

The rule in California regarding the right to counsel in one's defense is stated in the opinion of the California Supreme Court in the instant case as follows:

> "The due process clause of the fourteenth amendment of the federal Constitution and article I, section 13, of the California Constitution guarantee a defendant the right to be represented by counsel in every stage of the proceedings, and deprivation of this guarantee may be a violation of the due process clause of the fourteenth amendment. To constitute deprivation of due process, however, the denial of the right of the accused to be represented by counsel in every stage of the proceedings must have so fatally infected the regularity of his trial and conviction as to violate the fundamental aspects of fairness and result in a miscarriage of justice. (Lisenba v. California, 314 U. S. 219, 236 [62 S. Ct. 280, 86 L. Ed. 166]; cf.

Stroble v. California, 343 U. S. 181 at 197 [72 S. Ct. 599, 96 L. Ed. 872].)" (*People v. Crooker*, 47 Cal. 2d 348, 303 P. 2d 753.)

See:

Bute v. People of the State of Illinois, 333 U. S. 640, 68 S. Ct. 763.

Petitioner and *Amicus Curiae*, in their briefs and discussions of this point (Point I), have failed to discuss any such consequence as is suggested by the first limiting question presented on the granting of certiorari, to wit: Was the defendant denied due process of law by the refusal of the investigation officers to allow him to consult with an attorney upon demand being made to do so while he was in custody? Petitioner and *Amicus Curiae* have extended their discussions to the voluntary aspect of the confession, a discussion more proper under Point II *infra*. For the sake of accuracy, respondent will confine argument as to this matter to the heading II.

II.

This Defendant Was Not Denied Due Process of Law Under the Circumstances of This Case by the Admission Into Evidence of the Confession Made by Him While He Was in Custody and Was Not Allowed to Consult With an Attorney.

On July 5, 1955, defendant and petitioner John Russell Crooker, Jr. was arrested about 1:30 p.m. The arrest was made in his apartment and was for the murder of Norma McCauley. Crooker, aged 31 years, was a graduate of Pepperdine College, with the degree of Bachelor of Arts. He studied law at Southwestern University and at the University of California at Los Angeles. This study included the study of criminal law. He had learned

his lesson well for he was able to advise the polygraph operator, during the course of the interrogation, concerning the law of admissibility of evidence obtained by the use of the polygraph, commonly called the lie detector. He told the operator that such evidence was not admissible except upon stipulation of the attorneys [Tr. of R. p. 134].

See:

People v. Wochnick, 98 Cal. App. 2d 124, 219 P. 2d 70;

People v. Houser, 85 Cal. App. 2d 686, 193 P. 2d 937.

Crooker was told by at least one police officer that he did not have to say anything he did not want to say [Tr. of R. p. 158]. Defendant knew he did not have to answer questions and exercised this right not to answer certain questions [Tr. of R. p. 73]. Concerning his request to see an attorney, one of the police officers testified as follows [Officer Gotch on *voir dire* examination; Tr. of R. p. 83]:

"Q. When he made the request for an attorney, what did you tell him? A. I asked him who did he want for an attorney.

Q. And he said what? A. He stated he didn't know.

Q. What else did he say on this subject? A. I stated to him that after our investigation was concluded he could call an attorney, and if he didn't have funds to hire an attorney, when he went to Court a public defender would be assigned to handle his case.

He then stated that he had a friend who had been an instructor at Pepperdine College that would probably handle the case for him. I asked him who the

name was, and he said it was a man by the name of Simpson, who lived in Long Beach.

Q. He asked you if he could call an a orney at that time, and you told him that he could call after your investigation was completed, is that right? A. I told him, after I was through with the investigation, he could make a call."

The other officers who interrogated defendant testified that they did not hear the defendant make a request for an attorney. Officer Gotch never heard the defendant make that request again.

The West Los Angeles day watch jailer testified that, at a time after the making of the confession, defendant was asked if he wanted to call an attorney or some relative and that defendant stated that he had no attorney and that he had no desire to bring his relatives into it [Tr. of R. p. 245].

Defendant testified at the trial, in response to a question as to the purpose he had in requesting an attorney, that it was for the protection of the deceased, Norma McCauley [Tr. of R. p. 623].

This was the only time that defendant requested an attorney between the time of his arrest and the time of his confession made at approximately 3:30 the following morning, according to all the witnesses except, of course, the defendant himself; nor is there any suggestion in the evidence, other than the testimony of defendant, of any type of coercion; to the contrary, every officer testified that no force or violence or any other form of coercion was used toward defendant. (See Statement of Facts, *supra*, for a detailed digest of this testimony.)

We have set forth the above summary of the facts consistent with the implied findings of the verdict of the trial

jury, as well as the finding of the trial judge initially in admitting the confession into evidence and in denying the motion for a new trial. This is consistent with the decisions of this court as to the determination of conflicts in evidence.

In *Lisenba v. People of State of California*, 314 U. S. 219, 62 S. Ct. 280, 291, this court said:

> "There are cases, such as this one, where the evidence as to the methods employed to obtain a confession is conflicting, and in which, although denial of due process was not an issue in the trial, an issue has been resolved by court and jury which involves an answer to the due process question. In such a case we accept the determination of the triers of fact, unless it is so lacking in support in the evidence that to give it effect would work that fundamental unfairness which is at war with due process.
>
> "Here judge and jury passed on the question whether the petitioner's confessions were freely and voluntarily made, and the tests applied in answering that question rendered the decision one that also answered the question whether the use of the confessions involved a denial of due process; this notwithstanding the issue submitted was not eo nomine one concerning due process. Furthermore, in passing on the petitioner's claim, the Supreme Court of the State found no violation of the Fourteenth Amendment. Our duty then is to determine whether the evidence requires that we set aside the finding of two courts and a jury and adjudge the admission of the confessions so fundamentally unfair, so contrary to the common concept of ordered liberty as to amount to a taking of life without due process of law.

"In view of the conflicting testimony, we are unable to say that the finding below was erroneous so far as concerns the petitioner's claims of physical violence, threats or implied promises of leniency. There remains the uncontradicted fact that on two occasions, separated by an interval of eleven days, the petitioner was questioned for protracted periods. He made no admission implicating him in his wife's death during, or soon after, the interrogations of April 19, 20, and 21. If, without more, eleven days later confessions had been forthcoming we should have no hesitation in overruling his contention respecting the admission of his confessions."

See:

Stroble v. California, 343 U. S. 181, 72 S. Ct. 599.

It should be noted that the *Lisenba* case (as well as the *Stroble* case) arose in the same Superior Court and was reviewed in the same state Supreme Court as the instant case. Thus the finding in the instant case has been made contrary to the defendant's position twice by the trial judge (once on admitting the confession subject to the jury finding as to its voluntary nature, and second, on the denial of the motion for a new trial), by the trial jury and by the Supreme Court of the State of California, wherein the court stated:

"An examination of the record discloses conflicting testimony, that of the officers denying any force or that promises were made to defendant in consideration of the confession he made, and defendant's statement that he was slapped on one occasion and struck in the stomach on several occasions. In addition, when he took the stand, defendant was examined in detail as to his confession by the deputy district at-

torney and in each instance he admitted the officers had not told him what to say or write in his confession.

"The conflict in the testimony was thus squarely placed before the jury, whose finding was resolved against defendant's contentions, and it is binding upon this court. (People v. Mehaffey, 32 Cal. 2d 535 at 548 [7], 553 [11] [197 P. 2d 12].)" (*People v. Crooker, supra.*)

(At this point respondent makes reference to the Statement of Facts, *supra*, and in particular to the summary of the detailed and thorough cross-examination of defendant concerning the making of the confession).

Concerning the contention that defendant's confession was inadmissible because obtained in violation of his constitutional rights, the California Supreme Court also said:

"Second: That defendant's confession was obtained in violation of his constitutional rights and therefore was inadmissible in evidence.

"This contention is likewise devoid of merit. As pointed out above, there was a conflict in the evidence as to whether the confession was voluntary. There was also a conflict in the evidence as to the facts upon which the conclusion was necessarily based that the confession was free and voluntary, by the court in the first instance and finally by the jury to whom the matter was submitted on proper instructions. Since the evidence fully supports the finding of the trial court and the jury, their finding that the confession was freely and voluntarily made and not in violation of any of defendant's constitutional rights is binding upon this court. (People v. Mehaffey, supra.)"

Our position in summarizing the above stated facts favorably to respondent's position is also supported by *Lyons v. Oklahoma,* 322 U. S. 596, 64 S. Ct. 1208, 1212, wherein this court said:

> "When conceded facts exist which are irreconcilable with such mental freedom regardless of the contrary conclusions of the triers of fact, whether judge or jury, this Court cannot avoid responsibility for such injustice by leaving the burden of adjudication solely in other hands. But where there is a dispute as to whether the acts which are charged to be coercive actually occurred, or where different inferences may fairly be drawn from admitted facts, the trial judge and the jury are not only in a better position to apprise the truth or falsity of the defendant's assertions from the demeanor of the witnesses but the legal duty is upon them to make the decision. Lisenba v. California, supra, 314 U. S. page 238, 62 S. Ct. page 290, 86 L. Ed. 166.
>
> ". . .
>
> "Review here deals with circumstances which require examination into the possibility as to whether the judge and jury in the trial court could reasonably conclude that the McAlester confession was voluntary. The fact that there is evidence which would justify a contrary conclusion is immaterial. To triers of fact is left the determination of the truth or error of the testimony of prisoner and official alike."

This brings us to the basic consideration of the rules heretofore established by this court for the testing of a contention of a deprivation of due process of law by the withholding of requested services of counsel, prior to the making of a confession, and the subsequent introduction of such confession into evidence.

In the often cited case, *Lisenba v. People of State of California, supra,* 314 U. S. 280, 62 S. Ct. 290, this court stated:

> "As applied to a criminal trial, denial of due process is the failure to observe that fundamental fairness essential to the very concept of justice. In order to declare a denial of it we must find that the absence of that fairness fatally infected the trial; the acts complained of must be of such quality as necessarily prevent a fair trial. Such unfairness exists when a coerced confession is used as a means of obtaining a verdict of guilt. We have so held in every instance in which we have set aside for want of due process a conviction based on a confession."

In *Lyons v. Oklahoma, supra,* 322 U. S. 596, 64 S. Ct. 1212, it is stated:

> "The federal question presented is whether the second confession was given under such circumstances that its use as evidence at the trial constitutes a violation of the due process clause of the Fourteenth Amendment, which requires that state criminal proceedings 'shall be consistent with the fundamental principles of liberty and justice.' (Citations.)
>
> "No formula to determine this question by its application to the facts of a given case can be devised. (Citations.) Here improper methods were used to obtain a confession, but that confession was not used at the trial. Later, in another place and with different persons present, the accused again told the facts of the crime. Involuntary confessions, of course, may be given either simultaneously with or subsequently to unlawful pressures, force or threats. The question of whether those confessions subsequently given are themselves voluntary depends on the

inferences as to the continuing effect of the coercive practices which may fairly be drawn from the surrounding circumstances. Lisenba v. California, 314 U. S. 219, 240, 62 S. Ct. 280, 291, 86 L. Ed. 166. The voluntary or involuntary character of a confession is determined by a conclusion as to whether the accused, at the time he confesses, is in possession of 'mental freedom' to confess to or deny a suspected participation in a crime."

In *Stein v. People of State of New York, supra,* 346 U. S. 156, 73 S. Ct. 1077, 1092, it is stated:

"But the inquiry as to such allegations has a different point of departure. Interrogation is not inherently coercive, as is physical violence. Interrogation does have social value in solving crime, as physical force does not. By their own answers many suspects clear themselves, and the information they give frequently points out another who is guilty. Indeed, interrogation of those who know something about the facts is the chief means to solution of crime. The duty to disclose knowledge of crime rests upon all citizens. It is so vital that one known to be innocent may be detained, in the absence of bail, as a material witness. This Court never has held that the Fourteenth Amendment prohibits a state from such detention and interrogation of a suspect as under the circumstances appears reasonable and not coercive.

"Of course, such inquiries have limits. But the limits are not defined merely by calling an interrogation an 'inquisition,' which adds to the problem only the emotions inherited from medieval experience. The limits in any case depend upon a weighing of the circumstances of pressure against the power of resistance of the person confessing. What would be overpowering to the weak of will or mind might be utterly ineffective against an experienced criminal."

This is the same standard that has been utilized in every case according to its total facts.

See:

Fikes v. Alabama, 352 U. S. 191, 197-198, 77 S. Ct. 281, 285.

Examining the facts of the instant case in light of the above cited guiding rules laid down by this court, it is at once apparent that this defendant and the circumstances surrounding the making of his confession were distinguishably different from the corresponding circumstances of any case wherein this court has or should reverse the judgment of a state court for the reasons herein urged by petitioner. Both petitioner and *Amicus Curiae* rely heavily on the recent case of *Fikes v. Alabama, supra.* The defendant in the *Fikes* case was a mentally subnormal Negro with a third grade education. To compare him with the defendant in the instant case is to completely distinguish that authority. Here is no illiterate, uneducated youth surrounded by a hostile atmosphere, interrogated for days on end by relays of officers. Rather, defendant is a mature man of 31 years, well educated, specifically in law and particularly in criminal law, who was told he did not have to answer any questions and who exercised that right when in his judgment the occasion warranted.

Respondent cannot conceive what information an attorney could have given him of which he had not already evidenced knowledge.

Since deprivation of counsel is the only possible element of coercion open to this defendant at this stage of the proceedings, and since under the above cited rules establishing such deprivation as only one of the elements to be considered, in passing on the voluntary nature of a con-

fession, it is difficult to conceive of a set of circumstances where such deprivation could have less "fatally infected the regularity of his trial and conviction."

The most experienced criminal counsel could only have told the defendant that he had a right not to answer questions and have advised him to exercise that right. The evidence reflects that he was advised of this right and that he, in fact, exercised it as to certain questions. Surely, due process of law does not contemplate access to counsel for the purpose of assisting in the fabrication of facts, as may be suggested by defendant in his brief, where he sets up the alleged necessity for advice as to telling the truth concerning his relationship with the deceased. As this Honorable Court said in *Stein v. People of New York, supra*, 346 U. S. 156, 73 S. Ct. 1077, 1092, where interrogation is not inherently coercive, as is physical violence, it does have social value in solving crime, as physical force does not. By their answers many suspects clear themselves, and the information they give frequently points out another who is guilty. The duty to disclose knowledge of crime rests upon all citizens. It is submitted that the Fourteenth Amendment does not prohibit a state from such detention and interrogation of suspects as under the circumstances appears reasonable and not coercive.

See:

3 Wigmore, Evidence (3d Ed.), Sec. 851, pp. 319-320;

20 Am. Jur., Evidence, Sec. 503, pp. 434-435;

Fred E. Inbau, "The Confession Dilemma in the United States Supreme Court," 43 Ill. L. Rev., p. 442.

As this court said in *Lyons v. Oklahoma, supra,* 322 U. S. 596, 64 S. Ct. 1208, 1212:

> "The mere questioning of a suspect while in the custody of police officers is not prohibited either as a matter of common law or due process."

See:

Lisenba v. California, supra, 314 U. S. 219, 239-241, 62 S. Ct. 280, 291, 292;

Ziang Sung Wan v. United States, 266 U. S. 1, 14, 45 S. Ct. 1, 3;

State v. Sullivan, 227 F. 2d 511 (cert. den. 350 U. S. 973, 76 S. Ct. 449).

The Court might have been speaking of the instant case in *Stein v. People of State of New York, supra,* 346 U. S. 156, 73 S. Ct. 1077, 1094, wherein it is said:

> "Petitioners confuse the more rigid rule of exclusion which, in the exercise of our supervisory power, we have promulgated for federal courts with the more limited requirements of the Fourteenth Amendment. This, we have held, did not impose rules of evidence on state courts which bind them to exclude a confession because, without coercion, it was obtained while a prisoner was uncounseled and illegally detained."

Petitioner's brief wholly fails to distinguish between those same powers of this Court.

The California Supreme Court, in *Rogers v. Superior Court of Alameda County,* 46 Cal. 2d 3, 10, 291 P. 2d 929, has stated:

> "The test ordinarily used by state courts to determine the admissibility of a confession is, whether, considering all the circumstances, it was freely and

voluntarily made without any inducement held out to the accused. (See 19 A. L. R. 2d 1332, 1336-1345; 20 Am. Jur., Evidence, §482.) Since the McNabb case, the state courts that have had occasion to re-evaluate their test of admissibility as it applies to a confession made during illegal detention continue to treat delay in arraignment as only one of the factors to be considered in determining whether the statement was voluntarily made. Apparently none of the states following the rule excluding illegally obtained evidence have adopted the rule of the McNabb case; and we are not disposed to adopt it."

The distinction must be borne in mind between cases coming before this court in its supervisorial capacity over federal courts and its examination of constitutional limitations on proceedings in state courts. This distinction is well observed in the case of *Brown v. Allen*, 344 U. S. 443, 73 S. Ct. 397, 417:

"Under the leadership of this Court a rule has been adopted for federal courts that denies admission to confessions obtained before prompt arraignment notwithstanding their voluntary character. McNabb v. United States, 318 U. S. 332, 63 S. Ct. 608, 87 L. Ed. 819; Upshaw v. United States, 335 U. S. 410, 69 S. Ct. 170, 93 L. Ed. 100. Cf. Allen v. United States, 91 U. S. App. D. C. 197, 202 F. 2d 329. This experiment has been made in an attempt to abolish the opportunities for coercion which prolonged detention without a hearing is said to enhance. But the federal rule does not arise from constitutional sources. The Court has repeatedly refused to convert this rule of evidence for federal courts into a constitutional limitation on the states. Gallegos v. State of Nebraska, 342 U. S. 55, 63-65, 72 S. Ct. 141,

146-147, 96 L. Ed. 86. Mere detention and police examination in private of one in official state custody do not render involuntary the statements or confessions made by the persons so detained. Petitioner's constitutional rights were not infringed by the refusal of the trial court to exclude his confessions as evidence."

See:

Gallegos v. State of Nebraska, 342 U. S. 55, 63-65, 72 S. Ct. 141, 146-147.

Under the decisions of this court deprivation of counsel is only one of the factors to be considered in weighing the matter of claimed lack of due process depending on the voluntary nature of the confession.

The jury in the instant case was instructed as follows:

"You are instructed that a defendant in a criminal case has a constitutional right to counsel at all stages of the proceedings. Refusal to grant a prisoner's request for counsel constitutes a denial of fundamental rights. Whether or not the defendant asked for counsel, and if he did, whether he was or was not denied an opportunity to consult with counsel, are circumstances you may consider, among others, in determining whether the written confession was voluntary or involuntary."

In commenting on this matter the Supreme Court of California said:

"Thus the question was presented to the jury for its determination as to whether defendant's request for an attorney and the officers' conduct relative thereto resulted in a denial of defendant's fundamental rights, and the jury found against defendant's con-

tention. In view of the evidence, we are of the opinion the jury's determination was amply supported." (*People v. Crooker*, 47 Cal. 2d 348, 352, 303 P. 2d 753.)

Wholly consistent with these views is *Gallegos v. Nebraska, supra,* wherein this Court said:

"Prolonged detention without a charge of crime or without preliminary appearance before a magistrate, the lack of counsel before, during, or after arraignment, and confession to the police in private, are, however, elements that should be considered in determining whether a confession, permitted to be introduced and relied upon at a trial, has been obtained under such circumstances that its use violates due process. Watts v. State of Indiana, 338 U. S. 49, 54, 69 S. Ct. 1347, 1350, 93 L. Ed. 1801."

Mr. Justice Jackson, concurring and dissenting in *Watts v. State of Indiana,* 338 U. S. 49, 69 S. Ct. 1357, 1359, said:

"If the right of interrogation be admitted, then it seems to me that we must leave it to trial judges and juries and state appellate courts to decide individual cases, unless they show some want of proper standards of decision. I find nothing to indicate that any of the courts below in these cases did not have a correct understanding of the Fourteenth Amendment, unless this Court thinks it means absolute prohibition of interrogation while in custody before arraignment.

"I suppose no one would doubt that our Constitution and Bill of Rights, grounded in revolt against the arbitrary measures of George III and in the philosophy of the French Revolution, represent the maximum restrictions upon the power of organized society over the individual that are compatible with

the maintenance of organized society itself. They were so intended and should be so interpreted. It cannot be denied that, even if construed as these provisions traditionally have been, they contain an aggregate of restrictions which seriously limit the power of society to solve such crimes as confront us in these cases. Those restrictions we should not for that reason set aside, but that is good reason for indulging in no unnecessary expansion of them.

"I doubt very much if they require us to hold that the State may not take into custody and question one suspected reasonably of an unwitnessed murder. If it does, the people of this country must discipline themselves to seeing their police stand by helplessly while those suspected of murder prowl about unmolested. Is it a necessary price to pay for the fairness which we know as 'due process of law'? And if not a necessary one, should it be demanded by this Court? I do not know the ultimate answer to these questions; but, for the present, I should not increase the handicap on society."

Reference is also made to the dissenting opinion of Mr. Justice Burton in *Haley v. State of Ohio*, 332 U. S. 596, 68 S. Ct. 302, 310, wherein it is stated:

". . . While the constitutional and statutory rights of the accused, under such circumstances, must be safeguarded carefully, it is equally clear that serious constitutional and statutory obligations rest upon law enforcement officers to discover promptly those guilty of such an unprovoked murder as had been committed. . . ."

As the court said in *Stein v. People of State of New York, supra,* 346 U. S. 156, 73 S. Ct. 1077, 1099:

> "We are not willing to discredit constitutional doctrines for protection of the innocent by making of them mere technical loopholes for the escape of the guilty. The petitioners have had fair trial and fair review. The people of the State are also entitled to due process of law."

Conclusion.

For these reasons, and based upon the record and authorities cited herein, respondent submits that this court should hold that no violation of any constitutional right of this petitioner fatally infected the regularity of the proceedings as to prevent a fair trial; that therefore this petitioner was not denied due process of law as guaranteed by the Fourteenth Amendment to the United States Constitution and that, as a consequence, the judgment of the California Supreme Court be affirmed.

Respectfully submitted,

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Supreme Court of the United States

October Term, 1957.

No. 178.

JOHN RUSSELL CROOKER, JR.,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA.

Brief on Behalf of American Civil Liberties Union of Southern California, Amicus Curiae.

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IN THE

Supreme Court of the United States

October Term, 1957.

No. 178.

JOHN RUSSELL CROOKER, JR.,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA.

Brief on Behalf of American Civil Liberties Union of Southern California, Amicus Curiae.

Interest of Party Submitting Brief.

This brief is submitted with the written consent of the parties. Said consent accompanies this brief.

One of the fundamental rights guaranteed by the Constitution is the right to fair and impartial administration of criminal justice. The American Civil Liberties Union is devoted to the protection of all personal rights guaranteed by the Constitution, and is concerned lest the decision in the case at bar dilute the right to effective legal counsel guaranteed by the Fourteenth Amendment as part of due process.

The Constitutional Principles to Be Argued.

1. Due process of law is denied by the admission into evidence of a "confession" made after a prisoner has been in custody for fourteen hours and has been refused assistance of counsel.

2. The Petitioner was denied due process of law by the refusal of the investigating officers to allow him to consult with an attorney within a reasonable time after his request for legal assistance.

ARGUMENT.

This Court is faced once again with the necessity of overturning a State court criminal conviction because of improper methods used by the State authorities to obtain that conviction. Petitioner contends that his constitutional right to assistance of counsel, encompassed in the concept of due process, was violated by the conduct of the prosecuting authorities herein. Moreover, this case raises the question whether an allegedly "voluntary confession," obtained after a prolonged period of detention and after refusal to furnish counsel upon request, can be admitted into evidence without violating fundamental rights of the defendant.

I.

Due Process of Law Is Denied by the Admission Into Evidence of a "Confession" Made After a Prisoner Has Been in Custody for Fourteen Hours and Has Been Refused Assistance of Counsel.

The jury instructions given in this case clearly raise certain constitutional issues with respect to the admissibility of confessions. The Transcript of Record shows that the trial judge apparently gave two instructions pertinent to defendant's right to assistance of counsel, and then reread those instructions, or portions thereof, to the jury [Tr. 709-710].

Instruction No. 21, by its terms, states that denial of counsel is one of the "circumstances" in determining whether the written confession was voluntary or involuntary.

The last portion of Instruction No. 20, which was reread to the jurors [Tr. 709], states:

> "If a confession is made when the accused is under arrest and is being detained, or when he is not represented by counsel, or when he has not been told that any statement he might make will or may be used against him, such circumstances in and of themselves do not make the confession involuntary, but all the facts connected with the making of a confession, if one was made, including any such as I have mentioned, ought to be considered by you in determining whether or not the confession was voluntary."

These instructions do not adequately state the law as it is and should be, and constitute reversible error. The issue is not, "Was the confession voluntary?" Rather, this Court should rule that *any confession obtained from a prisoner* AFTER *he has requested assistance of counsel* (and before obtaining counsel), *is inadmissible.*

No other rule will adequately implement and protect the due process guarantee of assistance of counsel. The sole question for the jury should have been: "Did the defendant request the assistance of counsel?" If the trier of fact believes that such a request was made, the allegedly "voluntary" nature of the "confession" is irrelevant. This Court can properly hold that any "confession" made during a period in which counsel has been refused the prisoner is inadmissible, *because no such confession can truly be "voluntary."*

Can one ever say that the despairing statement of an accused man, ignorant and fearful, without the guidance and reassurance of a friendly advisor, is "voluntary"? Isn't confinement, *combined with prolonged refusal to grant the prisoner the right to consult his lawyer,* inevitably coercive?

Amicus Curiae realizes that a confession obtained during improper and illegal detention, while inadmissible in federal prosecutions under the McNabb Rule, may be admitted into evidence, if found to be "voluntary," without violating due process. It is strongly urged, however, that our system of jurisprudence cannot stomach *both* prolonged detention *and* denial of counsel as concomitants of a "voluntary" confession.

This case should evoke more than the usual forthright, but cliché, declaration that a criminal defendant is entitled to effective counsel. More important in fact, it must be made clear that this Court will overturn any conviction based on an allegedly "voluntary" confession obtained after counsel is improperly denied. Only in this way can over-zealous prosecutors be compelled to give heed to prisoners' requests for counsel. Only in this way can the admittedly fundamental right to counsel be given meaning.

II.

The Petitioner Was Denied Due Process of Law by the Refusal of Investigating Officers to Allow Him to Consult With an Attorney Within a Reasonable Time After His Request for Legal Assistance.

In recent years this Court has decided many cases in which the petitioners have claimed that denial of their right to counsel has, in fact and in law, deprived them of procedural due process. From these cases, certain ground rules have developed regarding the right of an accused to counsel in criminal proceedings. Thus, the Sixth Amendment has been interpreted to require that the defendant in all criminal cases in the Federal Courts be entitled to counsel either of his own choosing, or provided for him if he is unable to procure his own. (*Johnson v. Zerbst*, 304 U. S. 458 [1938]; *Glasser v. United States*, 315 U. S. 60 [1942].) Procedural due process is not denied when the People fail to provide defendants with the assistance of counsel in *non-capital* offenses, unless special circumstances render the matter unfair. (*Betts v. Brady*, 316 U. S. 455 [1942].) This Court has repeatedly held, however, that when a man's life is at stake under charge of a capital offense in a State court, procedural due process requires that the accused have the right to the assistance of counsel, whether or not other special circumstances are present. (*Tompkins v. Missouri*, 323 U. S. 485 [1945]; *Williams v. Kaiser*, 323 U. S. 471 [1945].)

Here, Petitioner was charged and convicted of murder in the first degree, a capital offense in California. Under such circumstances, it is clear under the decisions of this Court that he was entitled to the assistance of counsel, either appointed or of his own choosing, regardless of the

circumstances. This right must encompass the assistance of counsel from the time an accused is taken into custody.

Judge Magruder, speaking for the First Circuit, has stated in *Melanson v. O'Brien,* 191 F. 2d 963 at 968 (1st Cir., 1951):

> "The right to employ and be represented by counsel involves as a corollary the obligation of the State not to deprive the accused of the effective exercise of such right, by pressing the criminal action either without affording him a reasonable opportunity to secure such counsel, or without affording counsel a reasonable time in which to consult with his client. . . ."

Here, from the time of Petitioner's arrest, according to his testimony, he made requests of the officers of the Los Angeles Police Department for permission to consult with an attorney and that permission was denied him. Further, the record indicates that Petitioner was told that he could not contact an attorney until after the investigation had been completed. We cannot now determine whether, if Petitioner's request for counsel had been granted, Petitioner would later have confessed and whether the State would have secured such evidence otherwise to convict him. This Court has held that:

> "The right to have the assistance of counsel is too fundamental and absolute to allow Courts to indulge in nice calculations as to the amount of prejudice arising from its denial." (*Glasser v. United States, supra,* at 76.)

The right to assistance of counsel has only recently been further clarified in the case of *Moore v. Michigan,* No. 42, decided by this Court on December 9, 1957 (355 U. S. ....., 26 N. W. 4023). In that case, a conviction following a

plea of guilty without assistance of counsel, was reversed. The Court stated *inter alia:*

> "The right to counsel is not a right confined to representation during the trial on the merits. *Reece v. Georgia,* 350 U. S. 85. The circumstances compel the conclusion that the petitioner's rights could not have been fairly protected without the assistance of counsel to help him with his defense."

The record in this case indicates that Petitioner had a specific attorney in mind, a Mr. Simpson of Long Beach. No matter the circumstances, no matter the offense and no matter the Court in which the offense is being tried, it is clear beyond doubt that regardless of whether an accused would be entitled to the appointment of counsel, his right to counsel of his own choosing is unqualified. (*Chandler v. Fretag,* 348 U. S. 3 [1954].) The doctrine enunciated in *Betts v. Brady, supra,* has no application when an accused seeks to obtain his own counsel. As was stated by this Court more than twenty-five years ago in the famous *Scottsboro* case:

> "What, then, does a hearing include? Historically and in practice, in our own country at least, *it has always included the right to the aid of counsel when desired and provided by the party asserting the right.* . . ." (*Powell v. Alabama,* 287 U. S. 45, 68 [1932]; emphasis added.)

This Court, speaking through Chief Justice Warren, has further held that a necessary corollary to the right to counsel is that a defendant must be given a reasonable opportunity to employ and consult with counsel, otherwise the right to be heard by counsel would be of little worth (*Chandler v. Fretag, supra*). Thus, where an accused asked the District Attorney for a continuance to obtain

counsel and the District Attorney refused and did not inform the Court of the accused's request, the Court held that the accused had been denied due process by being deprived of the aid and advice of counsel of his own choosing. (*Melanson v. O'Brien, supra.*) Knowledge of the judge, or knowledge of the attending Marshal as to the accused's desire for counsel have been sufficient to put the Court on notice so that any denial of the accused's request for counsel of his choice was held a denial of due process. (See: *Mills v. Ragen,* 77 Fed. Supp. 15 [N. D., Ill., 1948]; *Walleck v. Hudspeth,* 128 F. 2d 343 [10th Cir., 1942].)

Those decisions of this Court which have held that there had been no denial of due process by reason of lack of counsel in a capital case, all differ from the instant matter. Thus, in *Carter v. Illinois,* 329 U. S. 173 (1946), the Petitioner had pleaded guilty after being advised of his right to counsel by the trial court and had not requested counsel. In *Stroble v. California,* 343 U. S. 181, 197 (1952), where an attorney had come to the office of the District Attorney at the request of the accused's relatives and was turned away, this Court took pains to express the point: "*At no point* did Petitioner himself ask for counsel." Similarly, see *Gallegos v. Nebraska,* 342 U. S. 55 (1951).

The truly fundamental principle, long recognized but subverted by the conviction herein, is that advice of counsel is essential to insure an accused fair administration of criminal justice. This attitude has been expressed eloquently before by this Court.

> ". . . Even the intelligent and educated layman has small and sometimes no skill in the science of law . . . he requires the guiding hand of counsel at every

> step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence . . . if in any case, civil or criminal, a State or Federal Court were arbitrarily to refuse to hear a party by counsel, employed by and appearing for him, it reasonably may not be doubted that such a refusal would be a denial of a hearing and, therefore, of due process in the constitutional sense." (*Powell v. Alabama, supra,* at 69.)

Laymen cannot be expected to understand the legal requirements of proper indictments, the various defenses available, or the technicalities of the law of evidence. Thus, in *Carter v. Illinois, supra,* the accused was faced with an indictment so ambiguous that he could have been convicted of claims ranging from assault with a deadly weapon to murder in the first degree. Only competent and effective counsel could have aided the accused in untangling the web of criminal justice. In *Gibbs v. Burke,* 337 U. S. 773 (1949), we find much relevant evidence on behalf of the defendant excluded, and considerable hearsay introduced against him without objection. This might have been prevented by competent counsel. And in *Chandler v. Fretag, supra,* we see the spectacle of an accused indicted for larceny and for the first time being informed at trial without counsel that he was being tried as a habitual criminal. Because he was unable to secure the assistance of counsel as he desired, he was tried, convicted and *punished* as a habitual criminal.

Who is to say now whether the Petitioner herein, with the effective assistance of counsel at the time of interrogation and detention, could not have shown a legal defense to the crime with which he was charged. But for the confession made after Petitioner was denied the assistance of

counsel and after Petitioner had been led to believe no help would be forthcoming until the police were finished with him, the State might never have been able to convict Petitioner.

Fundamental fairness requires that when an accused wants a lawyer, that it be required that the State afford him an opportunity to obtain one. Only by such a rule can we avoid the type of inquisition of which Americans justly complain, when citizens in certain European countries are pounced upon at will by State Police, are held in jail incommunicado, and are later convicted of crimes on confessions obtained during such incarceration. We believe the Constitution forbids such procedure as being in violation of due process, and ask the Court to so hold.

Conclusion.

The right of a criminal defendant to effective aid of counsel is undisputed. The case can either be a landmark by which that fundamental rule is implemented and clarified, or can become another of the too frequent cases in which a prisoner's rights are in fact (but not in law) denied, and respect for due process eroded.

It is submitted that this Court should make a forthright declaration that the right to counsel should be accepted in its literal terms, and that a confession obtained after a denial of counsel is inadmissible.

Respectfully submitted,

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